(22,489)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 209.

FRANCES A. MIEDREICH, PLAINTIFF IN ERROR,

vs.

CONSTANZE LAUENSTEIN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

INDEX.

	Original.	Print
Caption	1	1
Transcript from superior court of Vanderburgh county	4	1
Caption	4	1
Filing of plaintiff's complaint	4	2
Plaintiff's complaint	5	2
Appearance for defendant	9	4
Rule to answer	9	5
Motion to make more specific	10	5
Lis pendens notice	11	6
Lis pendens notice	12	7
Amended complaint, 1st paragraph	14	8
Amended complaint, 2d paragraph	19	11
Amended complaint, 3d paragraph	23	13
Defendant's demurrer to amended complaint	27	16
Amended complaint, 4th paragraph	28	16
Defendant's demurrer to 4th paragraph	34	20
Ruling on demurrers and exceptions	35	21
Answer of defendant	36	22
Leave to publish deposition of Henry R. Scott	36	22
Amended complaint, 5th paragraph	37	22
Demurrer to 5th paragraph	43	26
Ruling on demurrer to the 5th paragraph, and exception	44	27

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 20, 1912.

	Original.	Print
Defendant's answer to the 5th paragraph	44	27
Leave to publish deposition of Henry R. Scott	45	28
Defendant's answer to 2d, 3d, 4th, and 5th paragraphs	46	28
Demurrer of plaintiff to 2d, 3d, 4th, and 5th paragraphs of defendant's answer	48	30
Ruling of plaintiff's demurrers, and exceptions	49	30
Appearances	50	31
Filing of bill of exceptions	51	31
Bill of exceptions	52	32
Date of trial	52	32
Testimony of Fred Woelker	54	32
Deed, John Juchert to Rosa C. and Frances Juchert	54	33
Complaint in No. 8068, Harned *vs.* Juchert *et al.*	56	34
Summons to John and Rosa C. Juchert	57	34
Answer of John Juchert	58	35
Complaint No. 8443, Else Lauenstein *vs.* John Juchert *et al.*	58	35
Exhibit A—Note of John Juchert, June 10, 1890	64	38
C—Note of John Juchert, October 1, 1890	64	39
B—Mortgage	65	39
D—Mortgage	66	40
Summons to John Juchert and Michael Ulsomer and return	68	41
Summons to Frances Juchert and return	70	42
Supplemental complaint of Else Lauenstein	72	43
Præcipe for notice and proof of publication to Rosa C. Juchert	74	45
Notice of publication	75	46
Cross-complaint of Michael Ulsomer	76	46
Exhibit B to cross-complaint—Mortgage	77	47
Answer of guardian *ad litem* of Frances Juchert	83	50
Judgment in consolidated causes 8068 and 8443	84	51
Judgment and order of sale	87	53
Introduction of deposition and ruling and exception	89	53
Notice to take deposition	90	54
Deposition of Henry R. Scott	91	54
Certificate of notary public	106	63
Summons to Frances Juchert and return	108	64
Testimony of Frances Miedreich, *née* Juchert	109	64
Clara Sielerman	125	74
Sister Beatrice	129	76
William Dean	131	77
Father Ewers	134	79
Judgment in cause No. 7143, Rosa C. Juchert *vs.* John Juchert	136	79
Exception to introduction of judgment	136	80
Introduction of sheriff's certificate, ruling and exception	138	81
Certificate of sheriff	138	81
Assignment of Frederick Lauenstein	139	81
Assignment of Sebastian Henrich	140	82
Certificate of sheriff sale No. 78	141	82
Assignment of Frederick Lauenstein	142	83
Assignment of Sebastian Henrich	143	84
Certificate of sheriff	144	84
Assignment of Frederick Lauenstein	145	85

	Original.	Print
Assignment of Sebastian Henrich	146	85
Testimony of Peter Maier	147	86
Sheriff's deed	151	88
Death of Frederick Lauenstein admitted	154	89
Will of Frederick Lauenstein	155	90
Probate of will	156	90
Final judgment	157	91
Filing of motion for a new trial, overruling and exception	158	91
Time to file bill of exceptions	158	92
Motion for new trial	158	92
Reporter's certificate	159	92
Presentation of bill of exceptions	160	93
Certificate of judge to bill of exceptions	161	93
General præcipe for record	162	94
Date of filing general præcipe	162½	94
Clerk's certificate	163	94
Assignment of errors	164	95
Notice of appeal to clerk	165	95
Notice of appeal to appellee	166	96
Submission	167	96
Appearance for appellee filed	167	96
Brief for appellant filed	167	97
Petition for additional time filed	168	97
Order granting additional time	168	97
Brief for appellee filed	168	97
Reply brief filed	168	97
Petition to file amended statement, &c., filed	168	97
Order to file amended statement, &c	169	97
Amended statement filed	169	97
Order filing opinion	170	97
Opinion	171	98
Petition for rehearing filed	175½	100
Order overruling petition for rehearing	176	100
Opinion on overruling petition for rehearing	177	101
Petition for writ of error	180	102
Allowance of writ of error	182	103
Writ of error	185	104
Bond on writ of error	187	105
Citation	190	106
Proof of service of citation	191	106
Assignment of errors in the Supreme Court of the United States	193	107
Certificate of clerk of the supreme court of the State of Indiana	196	108

1 STATE OF INDIANA:

In the Supreme Court.

Be it remembered that heretofore to-wit: on the 22nd. day of October, 1907, the same being the 128th. Judicial Day of the May Term, 1907, of said Supreme Court, Frances A. Miedreich by her Attorneys, William P. Miedreich and John Brownlee, filed in the office of the Clerk of the Supreme Court of said State of Indiana, a transcript of the record and proceedings had in the Vanderburgh Superior Court of said State of Indiana, in a cause wherein Frances A. Miedreich was the Appellant, and Constanze Lauenstein, the Appellee, together with an assignment of errors by Appellant and proof of service of notice on Appellee.

2 & 3 In the Supreme Court of Indiana.

No. —

FRANCES A. MIEDREICH, Appellant,
v.
CONSTANZE LAUENSTEIN, Appellee.

Appeal from the Superior Court of Vanderburgh County.

Transcript.

4 In the Superior Court, March Term, 1906.

STATE OF INDIANA,
Vanderburgh County, ss:

Pleas begun and held at the Court House, in the City of Evansville, County of Vanderburgh, and State of Indiana, on the 16th day of March, 1906, when present the Honorable Alexander Gilchrist, Judge of the Superior Court of Vanderburgh County, Indiana, Guild C. Foster, Clerk of the Superior Court, and William E. Barnes, Sheriff of Vanderburgh County at which term of said Superior Court so begun and held, the following proceedings among others were held:

Filing of Plaintiff's Complaint.

In the Superior Court of Vanderburgh County, March Term, 1906.

STATE OF INDIANA,
Vanderburgh County, ss:

No. 13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Be it remembered, That heretofore to wit: On the 16th day of March, 1906, the above named plaintiff by Wm. P. Miedreich, her attorney, filed in the office of the Clerk of the Superior Court of Vanderburgh County, her complaint in said above entitled cause and which said complaint is in words and figures as follows:

5 STATE OF INDIANA,
Vanderburgh County, ss:

In the Superior Court of Vanderburgh County, March Term, 1906.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Action to Recover and Quiet Title.

The plaintiff, Frances A. Miedreich, nee Frances A. Juchert, complains of the defendant Constanze Lauenstein and says that she is the daughter of John Juchert and Rosa C. Juchert, both deceased; that she was born June 1883 and attained her majority in June 1904;

That on June 4th, 1892 she became the owner in fee simple of the following described real-estate, to-wit:

Lot Number Twenty-four (24), in Block Number Eleven (11) in Kazar's Division according to the Sub-division of said Block made by Eichel and Loewenthal, an Addition to the City of Evansville, subject to the life estate of her mother who departed this life in October, 1900.

That at the time she became the owner of said real estate one Elsa Lauenstein held two (2) mortgages aggregating Fifteen Hundred ($1500.00) Dollars on said property and four (4) Additional pieces of property described as follows, to-wit:

Lot Number Twenty-one (21) in Block Number Six (6) Kumler's addition to the City of Evansville;

Lot Number Twenty-three (23) Block Eleven (11) in said Kazar's Division;

6 Lots Number Five (5) and Six (6) in Block Number Seventeen (17) Woodlawn an Addition to the City of Evansville; that said property was reasonably worth the sum of Five Thousand ($5000.00) Dollars and is now worth the sum of Six Thousand Dollars ($6000.00);

That in May 1895 one Francis M. Harned by complaint numbered 8068 instituted in this court proceedings to foreclose a tax lien on said Lot Number Twenty-Four (24) Kazar's Sub-division that there after, to-wit:—November 1895 the said Elsa Lauenstein by complaint numbered 8443 instituted proceedings in this court to foreclose said mortgages on all of said above mentioned and described property; that thereafter said causes of action were consolidated;

That said Francis M. Harned and Elsa Lauenstein sought to make this plaintiff with said John Juchert and Rosa C. Juchert her father and mother and others, parties defendant to answer to their interests in said property;

That at the time said proceedings were instituted this plaintiff was twelve (12) years of age and that she was not a resident of Vanderburgh County, but a resident of Gibson County and had been for many years prior thereto;

That she was not summoned to appear and defend her interests in said action;

That she had no knowledge of the pendency of said action;

That she did not waive the service of process nor did any one for her or in her behalf or by her consent waive service of process or enter appearance for her.

This plaintiff further says that the said Elsa Lauenstein and Francis N. Harned or their attorneys wrongfully conspired and confederated together to deprive her of her interests in said real estate and caused this court trying said cause to be wrongfully imposed upon by causing the sheriff of Vanderburgh County

7 to wrongfully and fraudulently make a false return on the pretended summons alleging that this plaintiff had been served with process;

That at said time said summons was returned, this plaintiff was not amenable to the jurisdiction of the Sheriff of Vanderburgh County:

That thereupon this court being falsely advised in the premises appointed, at the instance of plaintiffs' Attorneys, W. W. Ireland, Esq., an attorney of this Court, her guardion ad litem to answer as to her interest by requiring proof of the allegations of the complaints.

Plaintiff further says that such proceedings were had in said cause that culminated in a judgment against her said father and mother by default (Order Book 19, page 449), and against her without an opportunity of being heard; that an order of sale was issued thereon and that the sale of all of said property including this plaintiff's was made on May 25th, 1896 by the then Sheriff of Vanderburgh County;

That at said Sheriff's sale the said Elsa Lauenstein became the

purchaser of all of the above described property for the sum of Nineteen Hundred and Eighty-eight ($1988.00) Dollars, that being the amount of her judgment and interests and costs; that a Sheriff's certificate was issued to her; that she thereafter sold the same to Frederick Lauenstein who obtained a sheriff's deed therefor on June 10th, 1897.

Plaintiff further says that this defendant claims title to said property by virtue of being the sole divisee of the said Frederick Lauenstein, lately deceased.

This plaintiff further avers that she is the owner and entitled to the possession of said Lot Number Twenty-four (24) in Block Number Eleven (11) in said, Kazar's Division to the City of Evans-
ville and that defendant now wrongfully withholds the same
8 and has ever since the 10th day of June 1897 wrongfully withheld the possession of the same;

That defendant though requested to surrender and deliver up said premises to plaintiff has failed, refused and still refuses to do the same;

That the rental of said premises and the improvements thereon, is and has been, One Hundred and Twenty ($120.00) Dollars per annum; that said premises at all times since June 1897 have been occupied; that by reason thereof said defendant is indebted to this plaintiff in the sum of Seven Hundred ($700.00) Dollars. That said judgment is a cloud upon her title to said real estate.

Wherefore she asks a decree of this Court vacating said judgment as to her and adjudging her to be the owner in fee simple of said property; that her title thereto be forever quieted and set at rest; that an accounting he had of the rents collected from and the amounts expended in behalf of said property; that the equities between plaintiff and defendant be adjusted and for all other and equitable relief.

WM. P. MIEDREICH,
Atty. for Pltff.

9 That afterwards to-wit, on the eleventh (11) judicial day of the March Term 1906, of the Superior Court to-wit; on Friday 16th day of March 1906 an order of said Court was made and entered of record and is in the words and figures following:

Appearance for Defendant.

#13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Comes now Peter Maier and enters his appearance for the defendant herein.

That thereafter to-wit: on the 2nd day of April, 1906 the same being the twenty-fourth Judicial day of the said March Term of

said Court, the following further proceedings were had in said cause:

Rule to Answer.

#13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Comes now the plaintiff by counsel, and on motion of the
10 plaintiff it is ordered by the court that defendant file her answer herein on or before Thursday April 5th, 1906.

And afterwards, to-wit, on the 5th day of April 1906, the same being the 27th judicial day of said Term of Court, the following proceedings were had in said cause:

Filing of Motion.

#13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Comes now the defendant by counsel and files her motion requiring plaintiff to make her complaint more specific and which motion is in the words and figures as follows to-wit:—

In the Superior Court of Vanderburgh County, March Term, 1906.

Motion to Make More Specific.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

The defendant moves the court to rewire the plaintiff to make his complaint more specific in this:

1. To state who caused the sheriff to make the false return of the Summons and who perpetrated the fraud alleged in making such false return and state the facts in regard to the fraud.

II. State who advised the court falsely and caused the appointment of a guardian ad litem for the minor.

P. MAIER,
D'f'ts' Att'y.

11 That thereafter to-wit, on the 10th day of April 1906, the same being the 31st judicial day of said Term of said Court,

the plaintiff filed in the office of the Clerk of the Superior Court, a Lis Pendens Notice, which notice is in the words and figures as follows to-wit:

Lis Pendes Notice.

STATE OF INDIANA,
Vanderburgh County, ss:

In the Superior Court of Vanderburgh County, March Term, 1906.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

Notice is hereby given that an action has been commenced and is now pending in the above named Court upon the complaint of the above mentioned plaintiff against the above mentioned defendant and that the object of such action is that the said defendant and all persons holding or claiming to hold by or under her may be forever barred from all claim to any estate or interest in the premises, hereinafter described and that the title to said premises be adjudged to be in the said plaintiff and that the said defendant surrender possession thereof to the plaintiff; that the cloud upon the plaintiff's title thereto be removed and that the judgment effecting plaintiff's interest in said real estate, to-wit:—that rendered in cause numbered 8443 in the said above mentioned court and entered in Order Book 19 page 449, be vacated and set aside as to this plaintiff.

That the premises in said County of Vanderburgh effected by this action, at the time of the commencement of this action and at the time of the filing of this notice were situated in the City of Evansville, in the last mentioned County and State and are described as follows:—

Lot Number Twenty-four (24) in Number Eleven (11) Kazar's Division according to the Sub-division of said Block made by Eichel and Loewenthal.

FRANCES A. MIEDREICH,
By WM. P. MIEDREICH, *Att'y.*

Filed and recorded this 10th day of April 1906 at 10.40 A. M.
GUILD. C. FOSTER, *Clerk.*

That thereafter, to-wit, on the 16th day of April, 1906, the same being the thirty-fifth judicial day of said Term, of Court, the plaintiff filed a Lis Pende-s Notice and which said Notice is in the words and figures following, to-wit:

Lis Pendens Notice.

STATE OF INDIANA,
Vanderburgh County, ss:

In the Superior Court of Vanderburgh County, March Term, 1906.

FRANCES A. MIEDREICH

—

CONSTANZE LAUENSTEIN.

Lis Pende-s Notice.

13 Notice is hereby given that an action has been commenced and is now pending in the above named Court upon the complaint of the above mentioned plaintiff against the above mentioned defendant and that the object of such action is that the said defendant and all persons holding or claiming to hold by or under her may be forever barred from all claim to any estate or interest in the premises hereinafter described and that the title to said premises be adjudged to be in the said plaintiff and that the said defendant surrender possession thereof to the plaintiff; that the cloud upon the plaintiff's title thereto be removed and that the judgment effecting plaintiff's interest in said real estate, to-wit:—that rendered in cause numbered 8443 in the said above mentioned court and entered in Order Book 19 page 449, be vacated and set aside as to this plaintiff.

That the premises in said County of Vanderburgh effected by this action, *that* at the time of the commencement of this action and at the time of the filing of this notice were situated in the City of Evansville, in the last mentioned County and State and are described as follows, to-wit:—

Lot Number Twenty-one (21) in Block Number Six (6) Kumler's Addition to the City of Evansville;

Lot Number Twenty-three (23) & Lot Number Twenty-four (24) in Block Number Eleven (11) in said Kazar's Division;

Lot- Number- Five (5) and Six (6) in Block Number Seventeen (17) Woodlawn an Addition to the City of Evansville.

FRANCES A. MIEDREICH,
By WM. P. MIEDREICH, *Att'y.*

Lis Pendens #1 page 153.

14 And thereafter to-wit, on the 16th. day of April 1906, the same being the thirty-fifth judicial day of said Term of said Court, the further following proceedings were had in said cause:

Filing Amendment Complaint, 1st Par.

#13635.

FRANCES A. MIEDREICH
vs.
CONSTANZE A. LAUENSTEIN.

Comes now the plaintiff by counsel, and files her amended Complaint, in three (3) paragraphs, and on motion of the plaintiff, it is ordered by the Court that the defendant file this answer herein, on or before Thursday April 19th, 1906; and which said Amended Complaint is in the words and figures as follows to-wit:

Amendment Complaint, 1st Par.

STATE OF INDIANA,
Vanderburgh County, ss:

In the Superior Court, Vanderburgh County, March Term, 1906.

FRANCES A. MIEDREICH
vs.
CONSTANZE A. LAUENSTEIN.

Action to Recover Real Estate and Quiet Title Thereto.

Amendment Complaint.

Par. I. The plaintiff, Frances A. Miedreich, née Frances A. Juchert, complains of the defendant, Constanze Lauenstein and says that she is the daughter and only heir of John Juchert and
15 Rosa C. Jouchert, both deceased; that she was born June 1883 and attained her majority in June 1904;

That on June 4th, 1892, she became the owner in fee simple by a warranty deed recorded in Deed Record 58 page 9 of the Records of Vanderburgh County, of the following described real-estate, to-wit.

Lot number Twenty-four (24) in Block Eleven (11) in Kazar's Division according to the Sub-division of said Block made by Eichel and Loewenthal, an Addition to the City of Evansville, subject to the life estate of her mother who departed this life in October 1900.

That at the time she became the owner of said real estate one Else Lauenstein held two (2) mortgages aggregating fifteen Hundred ($1500.00) Dollars on said property and four (4) additional pieces of property described as follows, to-wit:

Lot Number Twenty-three (23) in Block Eleven (11) in said Kazar's Division.

Lot Number Twenty-one (21) in Block Number Six (6) Kimler's Addition to the City of Evansville;

Lots Number Five (5) and Six (6) in Block Number Seventeen (17) Woodlawn an addition to the City of Evansville; That said property was reasonably worth the sum of Five Thousand ($5000.00) Dollars and is now worth the sum of Six Thousand Dollars ($6,000.00).

That in May 1895 one Francis M. Harned by complaint numbered 8068 instituted in this Court proceedings to foreclose a tax lien on said Lot Twenty-four (24) Kazar's Sub-division, that thereafter, to-wit:—November 1895 the said Else Lauenstein by complaint numbered 8443 instituted proceedings in this court to foreclose said mortgages on all of the above mentioned and described property; that thereafter said causes of action were connsolidated.

That said Francis M. Harned and Else Lauenstein sought
16 to make this plaintiff with said John Juchert and Rosa C. Juchert her father and mother, and others parties defendant to answer to their interests in said property.

That at the time said proceedings were instituted this plaintiff was twelve (12) years of age and that she was not a resident of Vanderburgh County, but a resident of Gibson County and had been for many years prior thereto;

That she was not summoned to appear and defend her interests in said action;

That she had no knowledge of the pendency of said action; that she did not waive the service of process nor did any one for her or in her behalf or by her consent waive service of process or enter appearance for her.

This plaintiff further says that the said Else Lauenstein and Frances M. Harned or their attorneys wrongfully conspired and confederated together to deprive her of her interests in said real estate and caused this Court trying said cause, to be wrongfully imposed upon by having the sheriff of Vanderburgh County to wrongfully and fraudulently make a false return on the pretended summons alleging that this plaintiff has been served with process; a particular statement of which facts cannot be given by this plaintiff because they are within the peculiar knowledge of said parties;

That at said time said summons was returned this plaintiff was not amenable to the jurisdiction of the Sheriff of Vanderburgh County.

That thereupon this Court being falsely advised in premises appointed, at the instance of plaintiff's attorneys W. W. Ireland, Esq., an attorneny of this Court, her guardian ad litem, to answer as to her interests by requiring proof of the allegations of the complaints.

Plaintiff further says that such proceedings were had in
17 said clause that culminated in a judgment and decree of foreclosure against her said father and mother by default, (Order Book 19, p. 449) and against her without an opportunity of being heard; that an order of sale was issued thereon and that the sale of all of said property including this plaintiff's was made on May 25th, 1896, by the then Sheriff of Vandenburgh County;

That at said Sheriff's sale the said Else Lauenstein by and through her attorney in fact, Frederick Lauenstein became the purchaser of

all of the above described property for the sum of Nineteen Hundred and Eighty-eight ($1988.00) Dollars; that three (3) Sheriff's certificates covering all of the above described real estate were issued to her; that she thereafter by and through her attorney in fact, Frederick Lauenstein assigned the said certificates to Sebastian Henrich on June 9th, 1897, who then and there on said day assigned the same to the said Frederick Lauenstein who obtained a Sheriff's deed therefor on June 10, 1897.

That at the time of the commencement of the proceedings herein alleged and for many years prior thereto and at the time of the sale and purchase herein alleged and many years thereafter the said Else Lauenstein was not a resident of the United States of America but a resident of the Empire of Germany; that said Frederick Lauenstein was at all such times her agent and attorney in fact (Misc. Rec. "B" p. 425 Records of Vanderburgh Co.) and had personal knowledge of the facts herein alleged and stated;

That the said Sebastian Henrich also had personal knowledge of the facts herein alleged and stated, and at that time was the receiver for the purpose of collecting the rents and profits of the real estate herein sought to be recovered, and was not a bona fide pur-
18 chaser for value of the said sheriff's certificates, but simply acted as a conduit to pass title thereto.

Plaintiff further says that this defendant claims title to said property by virtue of being the sole devisee of the said Frederick Lauenstein, lately deceased.

This plaintiff further avers that she is the owner and entitled to the possession of said Lot Twenty-four (24) in Block Number Eleven (11) in said Kazar's Division to the City of Evansville and that defendant now wrongfully withholds the same and has ever since the 10th, day of June, 1897, wrongfully withheld the possession of the same;

That defendant though requested to surrender and deliver up said premises to plaintiff has failed, refused and still refuses to do the same;

That the rental of the said premises and the improvements thereon is and has been One Hundred and Twenty ($120.00) Dollars per annum; that said premises at all times since June, 1897, have been occupied; that the said judgment is a cloud upon her title to said real estate.

Wherefore she asks a decree of this Court vacating said judgment as to her and adjudging her to be the owner in fee simple of said property; that her title thereto be forever quieted and set at rest; that an accounting be had of the rents collected from and the amounts expended in behalf of said property; that the equities between plaintiff and defendant be adjusted and for all other equitable relief.

WM. P. MIEDREICH,
Att'y for Pl'tff.

19 *Amended Complaint, 2d Par.*

Paragraph II. The plaintiff, Francis A. Miedreich, née Frances A. Juchert, complains of the defendant, Constanze Lauenstein and says that she is the daughter and only heir of John Juchert and Rosa C. Juchert, both deceased; that she was born June, 1883, and attained her majority in June, 1904;

That on June 4th, 1892, she became the owner in fee simple by warranty deed recorded in Deed Record 58 page 9 of the records of Vanderburgh County, of the following described real estate, to-wit:

Lot Number Twenty-four (24) in Block Eleven (11) in Kazar's Division according to the Sub-division of said Block made by Eichel and Loewenthal, an Addition to the City of Evansville, subject to the life estate of her mother who departed this life in October, 1900.

That at the time she became the owner of said real estate one Else Lauenstein held two (2) mortgages aggregating fifteen hundred ($1500.00) Dollars on said property and four (4) additional pieces of property described as follows, to-wit:

Lot Number Twenty-three (23) in Block Eleven (11) in said Kazar's Division.

Lot Number Twenty-one (21) in Block Number Six (6) Kumler's Addition to the City of Evansville:

Lots Number- Five (5) and Six (6) in Block Number Seventeen (17) Woodlawn an Addition to the City of Evansville;

That said property was reasonably worth the sum of Five Thousand ($5000.00) Dollars and is now worth the sum of Six Thousand ($6000.00) Dollars.

That in May, 1895, one Francis M. Harned by complaint numbered 8068 instituted in this Court, proceedings to foreclose a tax lien on said lot Twenty-four (24) Kazar's Sub-division, that thereafter, towit: November, 1895, the said Else Lauenstein by
20 complaint numbered 8443 instituted proceedings in this Court to foreclose said mortgages on all of the above mentioned and described property; that thereafter said causes of action were consolidated.

That said Francis M. Harned and Else Lauenstein sought to make this plaintiff with said John Juchert and Rosa C. Juchert her father and mother, and other parties defendant to answer to their interests in said property;

That at the time said proceedings were instituted this plaintiff was twelve (12) years of age and that she was not a resident of Vanderburgh County but a resident of Gibson County and had been for many years prior thereto;

That she was not summoned to appear and defend her interests in said action;

That she had no knowledge of the pendency of said action;

That she did not waive the service of process nor did any one for her, or in her behalf, or by her consent waive service of process or enter appearance for her.

This plaintiff further says that the said Elsa Lauenstein and

Francis M. Harned or their attorneys wrongfully conspired and confederated together to deprive her of her interests in said real estate and caused this Court trying said cause to be wrongfully imposed upon by having the Sheriff of Vanderburgh County to wrongfully and fraudulently make a false return on the pretended summons alleging that this plaintiff had been served with process; a particular statement of which facts cannot be given by this plaintiff because they are within the peculiar knowledge of said parties:

That at said time said summons was returned this plaintiff was not amenable to the jurisdiction of the Sheriff of Vanderburgh County.

21 That thereupon this Court being falsely advised in the premises appointed at the instance of plaintiff's attorney, W. W. Ireland, Esq., an attorney of this Court, her guardian ad litem to answer as to her interests by requiring proof of the allegations of the complaints.

Plaintiff further says that such proceedings were had in said cause that culminated in a joint judgment and decree of foreclosure against her father and mother by default, (Order Book 19, page 449) and against her without an opportunity of being heard; that an order of sale was issued thereon and that the sale of all of said property inculding this plaintiff's was made on May 25th, 1896, by the then Sheriff of Vanderburgh County;

That at said Sheriff's sale the said Else Lauenstein by and through her attorney in fact, Frederick Lauenstein became the purchaser of all of the above described property for the sum of Nineten Hundred and Eighty-eight ($1988.00) Dollars; that three (3) sheriff's certificates covering all of the above described real estate were issued to her; that she thereafter by and through her attorney in fact, Frederick Lauenstein assigned the said certificates to Sebastian Henrich on June 9th, 1897, who then and there on said day assigned the same to the said Frederick Lauenstein who obtained a sheriff's deed therefor on June 10, 1897.

That at the time of the commencement of the proceedings herein alleged and for many years prior thereto and at the time of the sale and purchase herein alleged and many years thereafter the said Else Lauenstein was not a resident of the United States of America, but a resident of the Empire of Germany; that said Frederick Lauenstein was at all such times her agent and attorney in fact (Misc. Rec. "B" p. 425, Records of Vanderburgh County) and had personal knowledge of the facts herein alleged and stated;

22 That the said Sebastian Henrich also had personal knowledge of the facts herein alleged and stated and at that time was receiver for the purpose of collecting the rents and profits from part of the real estate herein sought to be recovered, and was not a bonafide purchaser for value of the said sheriff's certificates, but simply acted as a conduit to pass title thereto.

The plaintiff further avers that by reason of the premises she is the owner and entitled to the possession of the said described real estate, to-wit:—

Lot Number Twenty-one (21) in Block Six (6) Kumler's Addition to the City of Evansville:

Lot Number Twenty-three (23) and Lot Twenty-four (24) in Block Eleven (11) in said Kazar's Division:

Lots Number Five (5) and Six (6) in Block Number Seventeen (17) Woodlawn an Addition to the City of Evansville; and that the defendant now wrongfully withfolds the same and has ever since the 10th day of June, 1897 wrongfully withheld the possession of the same;

That the rental on said premises and the improvements thereon is and has been Five Hundred and Forty ($540.00) Dollars per annum and that all of said premises at all times since June 1897 have been occupied;

That the said judgment is a cloud upon her title to said real estate.

Wherefore she asks, a decree of this court vacating said judgment and adjudging her to be the owner in fee simple of said real estate subject to the payment of said Nineteen Hundred and Eighty-eight ($1988.00) Dollars; that her title thereto be forever quieted and set at rest; that an accounting he had of the rents collected and the amounts expended in behalf of said property and that the
23 equities between plaintiff and defendant be adjusted and for all other equitable relief.

WM. P. MIEDREICH,
Attorney for Pl'ff.

Paragraph III.

Your petition-, Frances A. Miedreich, nee Frances A. Juchert, complains of the defendant, Constanze Lauenstein and says that she is the daughter of John Juchert and Rose C. Juchert, both deceased; that she was born June 1883 and attained her majority in June 1904;

That on June 4th, 1892, she became the owner in fee simple of the following described real estate, to-wit:—

Lot Number Twenty-four (24) in Block Number Eleven (11) in Kazar's Division according to the Sub-division of said Block made by Eichel & Loewenthal, an Addition to the City of Evansville, subject to the life estate of her said mother who departed this life in October, 1900.

That at the time she became the owner of said real estate one Else Lauenstein held two (2) mortgages aggregating Fifteen Hundred ($1500.00) Dollars on said property and Four (4) Additional pieces of property described as follows, to-wit:—

Lot Number Twenty-one (21) in Block Number Six (6) Kumler's Addition to the City of Evansville;

Lot Number Twenty-Three (23) Block Eleven (11) in said Kazar's Division;

Lots Number- Five (5) and Six (6) in Block Number Seventeen (17) Woodlawn an Addition to the City of Evansville;

That said property was reasonably worth the sum of Five Thou-

said ($5000.00) Dollars and is now worth the sum of Six Thousand Dollars ($6000.00).

That in May 1895 one Francis M. Harned by complaint
24 numbered 8068 instituted in this Court, proceedings to foreclose a tax lien on said Lot Number Twenty-four (24) Kazar's Sub-division that thereafter, to-wit:—November 1895 the said Else Lauenstein by complaint numbered 8443 instituted proceedings in this Court to foreclose said mortgages on all of said above mentioned and described property; that thereafter said causes of action were consolidated;

That said Francis M. Harned and Else Lauenstein sought to make this plaintiff with said John Juchert and Rosa C. Juchert her father and mother and others, parties defendant to answer to their interests in said property;

That at the time said proceedings were instituted this plaintiff was twelve (12) years of age and that she was not a resident of Vanderburgh County, but a resident of Gibson County and had been for many years prior thereto;

That she was not summoned to appear and defend her interests in said action;

That she had no knowledge of the pendency of said action: That she did not waive the service of process nor did any one for her or in her behalf or by her consent waive service of process or enter appearance for her;

That she was not amenable to the jurisdiction of the sheriff of Vanderburgh County, but that notwithstanding that fact and that she was not served with process, the sheriff made a false return on a pretended summons and the Court trying said cause, was wrongfully imposed upon by being presented with said pretended summons with a false return endorsed thereon alleging that she has been served with process.

That thereupon this Court being thus falsely advised in the premises appointed, at the instance of the plaintiff's attorney W. W. Ireland, Esq., an attorney of this Court, her guardian ad litem to answer as to her interest by requiring proof of the allegations of the complaints.

25 Plaintiff further says that such proceedings were had in said cause that culminated in a judgment against her said father and mother by default, (Order Book 19, page 449), and against her without an opportunity of being heard; that an order of sale was issued thereon and that the sale of all of said property including this plaintiff's was made on May 25th, 1896 by the then sheriff of Vanderburgh County.

That at said Sheriff's sale the said Else Lauenstein by and through her attorney in fact, Frederick Lauenstein, became the purchaser of all of the said Lot Number Twenty-four (24) in Block Eleven (11), Kazar's Division for the sum of ($400.00) Dollars; said real estate being then and there reasonably worth $1500.00; that a sheriff's certificate covering the said last described real estate was issued to her; that she thereafter by and through her attorney in fact, Frederick Lauenstein, assigned said certificate to Sebastian Henrich on

June 9th, 1897, who then and there on said day assigned the same to said Frederick Lauenstein who obtained a sheriff's deed therefor on June 10th, 1897.

Plaintiff further says that under said decree of foreclosure no time was specified in which she could redeem from said judgment; that the statutory period of redemption expired May 25th, 1897; that at said time she was a minor and under the age of Fourteen (14) years.

That she did not know the facts herein alleged nor that said first described real estate had been conveyed to her, nor that any attempt had been made to make her a party to said foreclosure proceedings until within the past six (6) weeks;

That the rental of said first described premises and the improvements thereon is and has been One Hundred and Twenty Dollars ($120.00) per year; that said premises at all times have been
26 occupied and defendant and her deceased husband have at all times collected the rent for the same.

Plaintiff further says that she is ready, and willing and offers to pay whatever the sum may yet be due on the purchase price Four Hundred ($400.00) Dollars and the cost of improvements, repairs, and incidentals that may have been expended on said premises and the cost and expenses connected herewith.

Wherefore your petitioner prays that an account may be taken of what, if anything, is due to the said defendant for the principal and interest on the said Four Hundred ($400.00) Dollars, and that an account may also be taken of the rents and profits of said premises which have been presented and received by the said defendant and her deviser or by any other person or persons, by their order or for their use, or without their wilful default or neglect, might have been received, and if it shall appear that said rents and profits have been more than sufficient to satisfy the principal and interest on said Four Hundred ($400.00) Dollars together with all costs, expenses, just above stated, then the residue thereof may be paid over to the plaintiff and that the plaintiff be permitted to redeem the said premises and that the defendant may be decreed to deliver up possession and execute and deliver a proper deed conveying said premises to this plaintiff or to such person as she shall direct, free from all incumbrances made by her or her deceased husband and for all other equitable relief.

WM. P. MIEDREICH,
Att'y for Pl't'ff.

27 And afterwards, to-wit: on the 20th day of April 1906 the same being the thirty-ninth judicial day of said Term of said Court, the following further proceedings were had in said cause:

#13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Filing of Demurrer.

Comes now the defendant by counsel and files her demurrer to the complaint herein, and which said demurrer is in the words and figures as follows, to-wit:—

Defendant's Demurrer.

In the Superior Court, Vanderburgh County, March Term, 1906.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

The defendant demurs to plaintiff's Amended Complaint for the following causes:

1. The Complaint does not state facts sufficient to constitute a cause of action.

Wherefore she asks judgment.

P. MAIER,
Def't's Att'y.

28 And afterwards to-wit, on the 26th day of April 1906, the same being the forty-fourth judicial day of said Term of said Court, the following further proceedings were had in said cause, in said Court:

#13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Filing of Fourth Paragraph of Amended Complaint.

Comes the plaintiff by counsel, and files her fourth (4th) paragraph of Amended Complaint, and which Fourth paragraph of the Amended Cofnplaint is in the words and figures as follows to-wit:—

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

Bill to Redeem.

Fourth Paragraph.

The plaintiff, Frances A. Miedreich, nee Frances A. Juchert, for a further cause of complaint herein against the defendant, Constanze Lauenstein, says that she is the daughter and only heir of John Juchert and Rosa C. Juchert, both deceased; that she was born in June 1883 and attained her majority in June 1904.

That on the 10th day of June 1890 and for many years prior thereto the said John Juchert was the owner in fee simple of the following described real estate, to-wit:—

Lots number Twenty-three and Twenty-four (23 & 24) in block Eleven (11) in Kazar's Division according to the Sub-division
29 of said block made by Eichel and Loewenthal, an Addition to the City of Evansville:

Lot Number Twenty-one (21) in Block Number Six (6) Kumler's Addition to the City of Evansville;

Lots Five (5) and Six (6) in Block Number Seventeen (17) Woodlawn, an Addition to the City of Evansville;

That on the said 10th day of June, 1890, he mortgaged all of the above described property to Else Lauenstein for the sum of One Thousand ($1000.00) Dollars; that said mortgage was recorded on the 19th day of June, 1890, in the records of Vanderburgh County in Mortgage record 31, page 295; that on the 1st day of October, 1890 he mortgaged the said above described property to the said Else Lauenstein for the further sum of Five Hundred ($500.00) Dollars, which mortgage was recorded on the 6th day of October, 1890, in mortgage record 32, page- 12 and 13 of the Records of Vanderburgh County;

That thereafter, towit:—On June 4th, 1892 the said John Juchert by a warranty deed conveyed the fee simple to said Lot Number Twenty-four (24) Block Eleven (11) Kazar's Division to this plaintiff subject to the life estate of her said mother who departed this life in October, 1900, said property being a parcel of the first above described real estate, That said deed was recorded in the office of the Recorder of Vanderburgh County in Deed Record 58, page 9, on June 4, 1892.

This plaintiff further says that in May, 1895 one Frances M. Harned by complaint numbered 8068 instituted in this Court proceedings to foreclose a tax lien on said lot Number Twenty-four (24) Block Eleven (11) Kazar's Sub-division, that thereafter, to-wit:—November 1895 the said Else Lauenstein by complaint numbered 8443 instituted proceedings in this Court to foreclose said mortgages on all of said above mentioned and described property; that thereafter said causes of action were consolidated;

30 That said Frances M. Harned and Else Lauenstein sought to make this plaintiff with said John Juchert and Rosa C. Juchert her father and mother and others, parties defendant to answer to their interests in said property;

That at the time said proceedings were instituted this plaintiff was twelve (12) years of age and that she was not a resident of Vanberburgh County, but a resident of Gibson County and had been for many years prior thereto;

That she was not summoned to appear and defend her interests in said action;

That she had no knowledge of the pendency of said action;

That she did not waive service of process nor did any one for her or in her behalf or by her consent waive service of process or enter appearance for her;

That she was not amenable to the jurisdiction of the sheriff of Vanderburgh, but that not withstanding that fact and that she was not served with process, the said sheriff made a false return on a pretended summons and the Court trying said cause was wrongfully imposed upon by being presented with said pretendes summons with a false return endorsed thereon alleging that she had been served with process.

That thereupon this Court being thus falsely advised in the premises appointed, at the instance of plaintiffs' attorneys, W. W. Ireland, Esq., an attorney of this Court, her guardian ad litem to answer as to her interest by requiring proof of the allegations of the complaints.

Plaintiff further says that such proceedings were had in said cause that culminated in a decree of foreclosure against her said father and mother by default, (Order Book 19, page 449), and against her without any opportunity of being heard; that an order of sale was issued thereon and that the sale of all of said

31 property including this plaintiff's was made on May 25th 1896 by the then sheriff of Vanderburgh County.

That at the Sheriff's sale the said Else Lauenstein by and through her attorney in fact, Frederick Lauenstein, became the purchaser of all of the above described real estate in the following sums, to-wit:—

Said Lot Twenty-four (24) in Block Eleven (11) Kazar's Division for the sum of Four Hundred ($400.00) Dollars; said real estate being then and there reasonably worth fifteen Hundred ($1500.00) Dollars;

Said Lot Number Twenty-three (23) in Block Number Eleven (11) Kazar's Division for the sum of Two Hundred and eighty-eight Dollars ($288.00), said real estate being then and there reasonably worth the sum of Fourteen ($1400.00) Dollars;

The said Lots Number- Five (5) and Six (6) in Block Seventeen (17) Woodlawn and Lot Number Twenty-one (21) in Block Six (6) Kumler's Addition for the sum of Thirteen Hundred ($1300.00) Dollars said real estate being then and there worth the sum of Thirty-one Hundred ($3100.00) Dollars;

That Three (3) Sheriff's certificates covering the above described real estate were issued to her; that she thereafter by and through her

attorney in fact, Frederick Lauenstein, assigned said certificates to Sebastian Henrich on June 9th, 1897, who then and there on said day assigned the same to Frederick Lauenstein who obtained a Sheriff's deed therefor on June 10th, 1897, said deed embracing all of said real estate.

That at the time of the commencement of the proceedings herein and for many years prior thereto and at the time of the sale and purchase herein alleged and for many years thereafter the said Else Lauenstein was not a resident of the United States of America, but a resident of the Empire of Germany; that said Frederick Lauenstein was at all such times her agent and attorney in fact (Misc. Record B, page 524, Records of Vanderburgh County)
32 and had personal knowledge of the facts herein alleged and said Sebastian Henrich also had personal knowledge of the facts herein alleged and stated and at that time was the receiver for the purpose of collecting the rents and profits from part of the real estate herein sought to be redeemed and was not a bona fide purchaser for value of said Sheriff's certificates, but merely acted as a conduit to pass title.

Plaintiff further says that under said decree of foreclosure no time was specified in which she could redeem from said Judgment; that the statutory period of redemption expired May 25th, 1897, that at said time she was a minor and under the age of Fourteen (14) years.

That she did not know the facts herein alleged nor that said first described real estate had been conveyed to her nor that any attempt had been made to make her a party to said foreclosure proceedings until within the past six weeks;

Plaintiff further says that this defendant claims title to the said property by virtue of being the sole divisee of said Frederick Lauenstein lately deceased;

That the rental of all of said described real estate and the improvements thereon is and has been Five Hundred and Forty ($540.00) Dollars per annum; that said premises have at all times been occupied since the said date of sale and the defendant and her deceased husband have at all times collected the rents for the same since the said 9th day of June, 1897, and have collected the rents from said Lot Number Twenty-four for the 31st day of January, 1896.

Plaintiff further alleges that the defendant neither claims nor has any other or further interest or title to all or any of the above described premises than that derived by the purchase under the decree to foreclose as above stated and by the last will and testament
33 of her said husband, Frederick Lauenstein and plaintiff avers that said title is subject to her right to redeem all the premises first above described.

Plaintiff further alleges that she is ready, willing and anxious to redeem the said premises from the sale and purchase; that she has offered to redeem the same of the defendant by the payment of Nineteen Hundred and Eighty-eight ($1988.00) Dollars, that being the full purchase price thereof, with interest at the rate of six (6%) per cent per annum from date of sale to March 22nd, 1906 to pay

the costs of improvements, repairs, taxes and incidental expenses that may have been expended on said premises and *that* the costs and expenses connected herewith, but that defendant refused and still refuses to accept said payment and to release the claim and title to the premises by her so acquired.

Wherefore your petitioner prays that an accounting may be taken of what, if anything, is due to the said defendant for the principal and interest on the said Nineteen Hundred and Eighty-eight Dollars ($1988.00), and that an accounting may also be taken of the rents and profits of said premises which may have been presented and received by the said defendant and her devisor or by any other person or persons, by their order or for their use or without their wilful default or neglect might have been received, and if it shall appear that said rents and profits have been more than sufficient to satisfy the principal and interest on said Nineteen Hundred and Eighty-eight ($1988.00) Dollars together with all costs, expenses, etc., just above stated, then the residue thereof may be paid over to the plaintiff and that the plaintiff be permitted to redeem the said premises and that the defendant may be decreed to deliver up possession and execute and deliver a proper deed conveying said premises to this plaintiff or to such person as she shall direct, free from all
34 incumbrances made by her or her deceased husband and for all other equitable relief.

WM. P. MIEDREICH,
Attorney for Pltf.

And afterwards, to-wit, on the 4th, day of May, 1906, the same being the (57th) fifty-seventh judicial day of said Term of said Court, the following further proceedings were had in said cause by said Court to-wit:—

Filing of Demurrer.

13635.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

Comes now the defendant by counsel, and files her demurrer to the 4th paragraph of the complaint and which said demurrer to the 4th paragraph of the complaint is in the words and figures as follows to-wit:—

Defendant's Demurrer to 4th Par.

In the Superior Court of Vanderburgh County, March Term, 1906.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

The defendant demurs to the 4th paragraph of the Plaintiff's Complaint and for cause says that the same does not state facts sufficient to constitute a cause of action against her. Wherefore she prays judgment.

P. MAIER,
Defendant's Att'y.

35 And afterwards to-wit, on the 11th day of June, 1906, the same being the 6th judicial day of June Term, 1906, the following proceedings were had in said cause by said Court to-wit:—

Order Overruling Defendant's Demurrer to 1st Par. of the Amended Complaint & Sustains Defendant's Demurrer to the 4th Par. & Exception.

No. 13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Come now the parties by counsel, and the Court being fully advised in the premises now overrules defendant's demurrer to the first paragraph of the complaint, and to which ruling of the Court the defendant excepts, and now the said Court sustains the defendant's demurrer to the 4th paragraph of the Complaint and to which ruling of the court the plaintiff excepts.

That afterwards to-wit, on the 25th day of June, 1906, the same being the eighteenth judicial day of the said June Term of said Court, the following further proceedings were had in said cause by said Court to-wit:—

Filing of Defendant's Answer.

13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Comes now the defendant by counsel and files her answer herein, and which answer is in the words and figures as follows to-wit:—

36 *Defendant's Answer.*

In the Supreme Court of Vandenburgh County, June Term, 1906.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

The defendant for answer to plaintiff's complaint herein denies each and every allegation therein contained.
Wherefore she asks judgment.

P. MAIER,
Defendant's Att'y.

And afterwards to-wit, on October the 10th, 1906, the same being the thirty-first judicial day of said Term of said Court, the following further porceedings were had in said cause by said Court to-wit:—

Leave to Publish Deposition.

13635.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

Comes now the parties by counsel and now a leave is granted to publish the deposition of Henry R. Scott which said deposition is in the words and figures as follows:
Transcript of record pages 91 to 106.

37 And afterwards to-wit, on the 11th day of February, 1907, the same being the forty-eighth judicial day of the December Term 1906, of said Court, the following proceedings were had in said cause to-wit:—

Filing of the 5th Paragraph of Complaint.

13635.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

Comes now the plaintiff by counsel and files her 5th paragraph of Amended Complaint, and which 5th paragraph of the Amended Complaint is in the words and figures as follows to-wit:—

Amended Complaint, 5th Par.

In the Superior Court of Vanderburgh County.

13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Amended Complaint.

Paragraph No. 5.

The plaintiff Frances A. Miedreich, née Frances A. Juchert, complains of the defendant, Constanze Lauenstein, and says that she is the daughter and only heir of John Juchert and Rosa C. Juchert, both deceased, and both dying intestate; that she was born in June, 1993, and attained her majority in June, 1904.

That on June the fourth, 1892, she became the owner in fee simple by a deed of conveyance recorded in Deed Record 58 page 9, of the records of Vanderburgh County, Indiana, of the fol-
38 lowing described real estate, to-wit:—

Lot Number Twenty-four in Block Eleven in Kazar's Division, according to the Subdivision of said Block made by Eichel and Lowenthal, an addition to the City of Evansville, subject to the life estate of her mother who departed this life in October, 1900.

That at the time she became the owner of said real estate, one Else Lauenstein held two mortgages aggregating Fifteen Hundred ($1500.00) Dollars on said property and four additional pieces of property, described as follows to-wit:

Lot Number Twenty-three (23) in Block Eleven (11) in said Kazar's Division;

Lot Number Twenty-one (21) in Block Number Six (6) Kumler's Addition to the City of Evansville;

Lot- Number- Five and Six (5 & 6) in Block Number Seventeen (17), Woodlawn, an addition to the City of Evansville, said mortgages having been executed by the said John Juchert and wife, he then being the owner of all of said real estate.

That said property was reasonably worth the sum of Five Thousand ($5000.00) Dollars and is now worth the sum of Six Thousand ($6000.00) Dollars.

That in May, 1895, one Francis Harned by complaint # 8068 instituted in this court proceedings to foreclose a tax lien on said Lot Number Twenty-four (24) Kazar's Sub-division that thereafter, to-wit: November 1895 Else Lauenstein by complaint numbered 8443 instituted proceedings in this court to foreclose said mortgages on all of the above mentioned and described property; that thereafter said causes of action were consolidated.

That said Francis M. Harned and Else Lauenstein sought
39 to make this plaintiff with the said John Juchert and Rosa C. Juchert, her father and mother, and other parties defendants to answer to their interests in said property;

That at the time said proceedings were instituted this plaintiff was twelve years of age and that she was not a resident of Vanderburgh County, but a resident of Gibson County, Indiana, and had been for many years prior thereto; that she was not summoned to appear and defend her interests in said actions;

That she had no knowledge of the pendency of said action;

That she did not waive the service of process, nor did any one for her or in her behalf or by her consent waive service of process, or enter appearance for her.

That plaintiff further says that the said Else Lauenstein and Francis N. Harned or their attorneys carelessly, negligently, wrongfully and fraudulently directed the summons in this consolidated cause to be issued to the sheriff of Vanderburgh County, Indiana, whereas in truth and in fact this plaintiff was then and had been for a long time prior thereto a bona-fide resident of Gibson County, Indiana, and was not then within Vanderburgh County and had not been for a long time prior thereto.

That said Else Lauenstein and Francis H. Harned and their attorneys carelessly, negligently, wrongfully and fraudulently directed the sheriff of Vanderburgh County, then and there, to serve said pretended summons upon some person whose name and identity is to the plaintiff unknown, and carelessly, and fraudulently represented that said person was this plaintiff, and said sheriff of Vanderburgh County, by reason of said wrongful and fraudulent conduct of plaintiffs or their attorneys, then and there wrong-
40 fully served said pretended summons upon said person whose name and identity is to this plaintiff unknown, and thereupon said sheriff then and there, by reason of said wrongful and fraudulent conduct of the plaintiffs or their attorneys, wrongfully endorsed in writing upon the summons, "Served upon the within named Frances Juchert, this plaintiff, by reading," whereas in truth and in fact the said sheriff did not then, nor at any time serve said summons or any other summons, upon this plaintiff, whereas in truth and in fact, at the time said sheriff made said pretended service of said pretended summons, this plaintiff was not within the bounds of Vanderburgh County, but was at her home in Gibson County, Indiana, and that thereupon said sheriff returned said pretended summons into this court with said wrongful and pretended service endorsed thereon in writing and thereupon said plaintiffs through their said attorneys and said sheriff and by reason of said careless, negligent, wrongful and fraudulent acts, caused this court before which said cause was pending to be wrongfully deceived and to believe that this plaintiff had been duly served with summons in this consolidated action, and thereupon this court, being so wrongfully and falsely and fraudulently advised in the premises, appointed at the instance of plaintiff's attorneys in this consolidated cause, W. W. Ireland, Esq., an attorney of this court, her guardian ad litem to

answer as to her interests by requiring proof of the allegations of the complaints.

Plaintiff further says that such proceedings were had in said cause that culminated in a joint judgment and decree of foreclosure against her father and mother by default. (Order Book) (19), page (449) and against her without an opportunity of being heard; that an order of sale was issued thereon and that the sale of all of said property including this plaintiff's was made on May
41 25th, 1896 by the then sheriff of Vanderburgh County.

That at said sheriff's sale the said Else Lauenstein by and through her attorney in fact, Frederick Lauenstein became the purchaser of all of the above described property for the sum of Nineteen Hundred and Eighty-eight ($1988.00) Dollars; that three (3) Sheriff's certificates covering all of the above described real estate were issued to her; that she thereafter by and through her attorney, in fact, Federick Lauenstein assigned the said certificates to Sebastian Henrich on June 9th, 1897, who then and thereon said day assigned the same to the said Frederick Lauenstein who obtained a Sheriff's deed therefor on June 10th, 1897.

That at the time of the commencement of the proceedings *m* herein alleged and for many years prior thereto and at the time of the sale purchased herein alleged and many years thereafter the said Else Lauenstein was not a resident of the United States of America, but a resident of the Empire of Germany; that said Frederick Lauenstein was at all such times her agent and attorney in fact, (Misc. Rec. "B" p. 425, Records of Vanderburgh County) and had knowledge of the facts herein alleged and stated.

That the said Sebastian Henrich also had personal knowledge of the facts herein alleged and stated and at that time was receiver for the purpose of collecting the rents and profits from part of the real estate herein sought to be recovered, and was not a bona fide purchaser for value of the said sheriff's certificates, but simply acted as a conduit to pass title thereto.

The plaintiff further avers that by reason of the premises she is the owner and entitled to the possession of the said described real estate, to-wit:—

Lot Number Twenty-one (21) in Block Six (6) Kumler's Addition to the City of Evansville.

42 Lot Number Twenty-three (23) and Lot Number Twenty-four (24) Block Eleven (11) in said Kazar's Division.

Lots Number Five (5) and Six (6) in Block number Seventeen (17) Woodlawn an Addition to the City of Evansville.

That the defendant now wrongfully withholds the same and has ever since the 10th day of June 1897 wrongfully withheld the possession of the same;

That the rental on said premises and the improvements thereon is and has been Five Hundred and Forty ($540.00) Dollars per annum and that all of said premises at all times since June 1897 have been occupied;

That the said judgment is a cloud upon her title to said real estate.

Wherefore she asks a decree of this Court vacating said judgment and adjudging her to be the owner in fee simple of said real estate subject to the payment of said Nineteen Hundred and Eight-eight ($1988.00) Dollars, and interests and that her title thereto be forever quieted and set at rest; that an accounting be had of the rents collected and the amounts expended in behalf of said property and that the equities between plaintiff and defendant be adjusted and for all other equitable relief.

WM. P. MIEDREICH.
JOHN BROWNLEE.

And afterwards to-wit, on the 4th day of March 1907, the same being the first judicial day of the March Term, 1907 of said Court, the following proceedings were had in said cause to-wit:

43 Filing of Demurrer to 5th Par. of the Complaint.

#13635.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

Comes now the defendant by counsel and files her demurrer to the 5th paragraph of the complaint, which said demurrer is in the words and figures as follows to-wit:—

Demurrer to the 5th Paragraph of the Complaint.

In the Superior Court of Vanderburgh County, Ind., March Term, 1907.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

The defendant demurs to the "Fifth Paragraph" of the complaint and for cause says that the same does not state facts sufficient to constitute a cause of action against her.

Wherefore she asks judgment.

P. MAIER,
D'f't's Att'y.

And afterwards to-wit, on the 22nd of March 1907, the same being the seventeenth judicial day of the March Term of the said Court, the following additional proceedings were had in said cause by said Court, to-wit:—

44 *Order Overruling the Defendant's Demurrer to the 5th Par. of Amended Complaint & Exception.*

#13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Comes now the parties by counsel, and the Court being fully advised in the premises, now overrules the defendant's demurrer to the 5th paragraph of the complaint, to which ruling of the Court, the defendant excepts.

And afterwards to-wit, on the 29th day of March 1907, the same being the twenty-third judicial day of said March Term of said Court, the following proceedings were had in said cause to-wit:—

Filing of Defendant's Answer.

#13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Comes now the defendant by counsel, and files her answer to the complaint which said answer is in the words and figures as follows, to-wit:—

In the Superior Court of Vanderburgh County, March Term, 1907.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

The defendant for answer to plaintiff's complaint herein denies each and every allegation therein contained.
Wherefore she asks judgment.

PETER MAIER,
D'f't's Att'y.

45 And afterwards to-wit, on the 12th day of April, 1907, the same being the thirty-fifth judicial day of said March Term of said Court, the following further proceedings were had in said cause by said Court:

Leave to Publish Deposition of Henry R. Scott.

#13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Comes now the plaintiff by counsel and on motion of plaintiff, leave is granted plaintiff to publish the deposition of Henry R. Scott, and which said deposition is in the words and figures as follows:—

Transcript of record, pages 91 to 106.

46 And afterwards, to-wit, on the 6th day of May, 1907, the same being the fifty-fourth judicial day of the March Term 1907, of said Court, the following further proceedings were had in said cause:

Filing of Defendant's Answer to the 2nd, 3rd, 4th & 5th Paragraphs of Amended Complaint.

#13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Comes now the defendant by counsel and files her answer to the second, third, fourth and fifth paragraphs of complaint (files her answer consisting of the 2nd, 3rd, 4th & 5th paragraphs of her answer), which said answer is in the words and figures as follows to-wit:—

Defendant's Answer to 2, 3, 4, & 5 Paragraphs of the Amended Complaint.

In the Superior Court of Vanderburgh County, March Term, 1907.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Par. 2.

Defendant for further answer herein says that plaintiff's action did not accure within two years before the bringing of this action.

Wherefore she demands judgment.

Par. 3.

The defendant for further answer to plaintiff's complaint herein says that her action did not accrue within three years before
47 the bringing of this action.
Wherefore she demands judgment.

Defendant's Answer to the 2, 3, 4, & 5 Paragraphs of the Amended Complaint.

Par. 4.

The defendant for further answer to plaintiff's complaing herein says that her action did not accrue within five years before the bringing of this action.
Wherefore defendant asks judgment.

Par. 5.

The defendant for further answer to plaintiff's 5th paragraph of the complaint says that her action therein set forth did not accrue within ten years.
Wherefore defendant asks judgment.

PETER MAIER,
Att'y for Defendant.

And afterwards to-wit, on the 6th day of June 1907, the same being the fourth judicial day of the said June Term 1907 of said Court, the following further proceedings were had in said cause by said Court:

Filing of Demurrer.

#13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Comes now the plaintiff and files her demurrer to the 2nd, 3rd, 4th and 5th paragraphs of the answer which demurrer is in the words and figures as follows to-wit:—

48 *Plaintiff's Demurrer to the 2d, 3rd, 4th & 5th Paragraphs of Defendant's Answer.*

In the Superior Court of Vanderburgh County, June Term, 1907.

#13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Comes now the plaintiff and demurs separately and severally to the second, third, fourth, and fifth paragraphs of the defendant's answer herein, and for ground of demurrer says that neither of said paragraphs states facts sufficient to constitute a cause of defense to plaintiff's complaint and to the cause of action stated in plaintiff's complaint.

WM. P. MIEDREICH,
JOHN BROWNLEE,
Attorneys for Plaintiff.

And afterwards to-wit, on the 13th day of June 1907, the same being the tenth judicial day of the June Term, 1907, of said Court, the further following proceedings were had in said cause by said Court, to-wit:—

Order Sustaining Plaintiff's Demurrer to 5th Par. of the Defendant's Answer.

#13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Come now the parties by counsel and the Court being fully advised in the premises, now sustains plaintiff's demurrer to the 5th
49 paragraph of the defendant's answer to which ruling of the Court the defendant excepts.

Order Sustaining Plaintiff's Demurrer to the 2d, 3rd, & 4th Paragraphs of Defendant's Answer & Exceptions.

And now the Court sustains the plaintiff's demurrer to the 2nd, 3rd, 4th paragraphs of defendant's answer to which ruling of the Court the defendant excepts.

50 In the Superior Court of Vanderburgh County, June Term, 1907.

#13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Appearances.

Appearances:

On Behalf of the Plaintiff: William P. Miedreich, Evansville, Indiana.
John Brownlee, Evansville, Indiana.
On Behalf of Defendant: Peter Maier, Evansville, Indiana.

51 And afterwards, to-wit, on the 9th day of October, 1907, the same being the Twenty-eighth judicial day of the September Term, 1907, of said Court, the following proceedings were had in said cause to-wit:—

#13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Filing of Bill of Exceptions.

Comes the plaintiff and files her Bill of Exceptions containing the longhand Transcript of the Reporter's notes of the evidence, the rulings of the Court, the exceptions of Counsel thereon and thereto, said bill of exceptions having heretofore to-wit September 19th 1907, been presented to the Court and taken under consideration and on this 9th day of October, 1907, duly signed for the purpose of Appeal herein, and which said Bill of Exceptions is in the words and figures as follows to-wit:—

Superior Court. Filed Oct. 9, 1907. Guild C. Foster, Clerk.

52 In the Superior Court of Vanderburgh County, June Term, 1907.

No. 13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Date of Trial.

Be it remembered: That on the 14th day of June, 1907, the above entitled cause came on for trial before the Honorable Alexander Gilchrist; that on the trial of said cause and in support of the respective issues thereon, the following evidence was given to said Court trying the cause, and the following rulings of the Court were made in respect to the admission and rejection of evidence, and the objections and exceptions thereto were made and taken as noted therein and said rulings, objections and exceptions are incorporated into this Bill of Exceptions and made a part thereof, and the same are in the words and figures as follows, to-wit:

53 In the Superior Court of Vanderburgh County, June Term, 1907.

#13635.

FRANCES A. MIEDREICH
v.
CONSTANZE LAUENSTEIN.

Be it remembered: That among the proceedings had in the Superior Court of Vanderburgh County, in the State of Indiana, at the June Term thereof, in the year 1907, before the Honorable Alexander Gilchrist, Judge of said Court, are the following in cause No. 13635, wherein Frances A. Miedreich is plaintiff and Constanze Lauenstein is defendant, that it to say:

54 Be it remembered: That on the 14th day of June, 1907, it being the 11th Judicial Day of the June Term, 1907, of the Superior Court, this cause being submitted to the Court for trial, without the intervention of a jury, the plaintiff to maintain the issues on its behalf, introduces the following evidence:

Examination of Fred Woelker.

FRED WOELKER, after being duly sworn, testified as follows:

Direct examination by JOHN BROWNLEE:

Q. Your name is Fred Woelker?
A. Yes sir.

Q. You are the County Recorder?
A. Yes sir.
Q. What is that you have there?
A. Deed Record 58, page nine.
Q. Do you find a deed there from John Jouchert to his daughter?
A. To his wife.

Said deed is offered and introduced in evidence, which is in the words and figures as follows, to-wit:

Deed, John Juchert to Rosa C. Juchert & Frances Juchert.

This indenture witnesseth, That John Juchert of Vanderburgh County, in the State of Indiana, conveys to Rosa C. Juchert of Vanderburgh County, in the State of Indiana for the sum of Eight Hundred Dollars ($800.00), the following Real Estate in Vanderburgh County, in the State of Indiana, to-wit:—

55 Lot Number Twenty-four (24) in Eichel & Loewenthal's Subdivision of Block Eleven (11) of Kazar's Division of the South East quarter of the North-east quarter of Section Nineteen Town Six (6) Range Ten (10) to have and to hold during her natural life and upon her death to go to Frances Juchert, child of said John and Rosa C., if living and if not then in fee to heirs of said John Juchert if he should not survive said Frances, but if he is living then fee simple shall revert to him.

In Testimony Whereof, The said John Juchert has hereunto set his hand and said seal this — day of June 1892.

(Signed) JOHN JUCHERT. [SEAL.]

STATE OF INDIANA,
Vanderburgh County, ss:

Before me, C. L. Wedding, a Notary Public, in and for said County, this — day of June, 1892, personally appeared the within named John Juchert and acknowledged the execution of the foregoing Deed.

Witness my hand and official seal.

[SEAL.] CHAS. L. WEDDING,
Notary Public. [SEAL.]

Recorded June 4th, 1892, in Deed Record #58, P. 9.

PAUL DE KRESS, *R. V. C.*

56 Counsel for plaintiff, offers and introduces in evidence all of the papers in Cause #8068, Frances M. Harned V. John Juchert et al.; which are in the words and figures as follows to-wit:

STATE OF INDIANA,
Vanderburgh County:

In the Superior Court, March Term, 1895.

FRANCIS M. HARNED
VS.
JOHN JUCHERT & ROSA C. JUCHERT.

Complaint #8068.

Francis M. Harned complains of John Juchert and Rosa C. Juchert and says that he is the owner of the following real estate in Vanderburgh County, Indiana, to-wit:

Lot Twenty-four (24) in Block number eleven (11) in Kazar's Subdivision in the City of Evansville.

That the defendants wrongfully assert title to the same which is a cloud upon Plaintiff's title thereto. Wherefore Plaintiff prays that his title to said real estate be quieted and that Defendants be enjoined and inhibited from asserting or setting up any title thereto or claim of ownership therein and all other proper relief.

MATTISON, POSEY & CHAPPELL.

The complaint bears the following endorsements: Vanderburgh County. Filed, May 8, 1895. Chas. F. Boepple, Clerk.

57 No. 8068. Francis M. Harned vs. John J. Juchert et al. Summons. Superior Court. Fees 65c. To March Term, 1895. To May 20, 1895. Mattison, Posey, Chappell, Attorney- for Plaintiff.

Summons.

STATE OF INDIANA,
Vanderburgh County, ss:

The State of Indiana to the Sheriff of Vanderburgh County, Greeting:

You are hereby commanded to summon John Juchert and Rosa C. Juchert, 900 Columbia St., to appear in the Superior Court of Vanderburgh County, before the Judge thereof, on the 20th day of May 1895, at the Superior Court Room in Evansville, to answer the complaint of Francis M. Harned and of this writ make due return.

Witness, The Clerk of said Court, and Seal thereof hereunto affixed, at Evansville, this 8th day of May 1895.

CHAS. F. BOEPPLE, *Clerk,*
By —— ——, *Deputy.*

Return of Summons.

This writ came to hand May 8th, 1895. Served on the within named by reading except Rosa C. Juchert who could not be found in my bailiwick. May 9–1895.

CHARLES G. COVERT,
By WALTER RUSTON, *D'p'ty.*

58 Superior Court. No. 8068. Frances M. Harned vs. John Juchert et al. Answer of John Juchert.

In the Superior Court, Vanderburgh County, March Term, 1895.

FRANCIS M. HARNED
vs.
JOHN JUCHERT et al.

Answer of John Juchert.

The defendant, John Juchert, for separate answer, herein denies each and every allegation in the compaint contained—wherefore he prays judgment.

MAIER & HERMAN,
D'f't Juchert's Att'y.

Complaint #8443.

Counsel for plaintiff, offers and introduces in evidence all the papers in cause #8443, Else Lauenstein vs. John Juchert, et al.

STATE OF INDIANA,
Vanderburgh County, ss:

Superior Court, Vanderburgh County, December Term, 1895.

ELSE LAUENSTEIN
vs.
JOHN JUCHERT, MICHAEL ULSOMER, EMELIE KNOLL, JAMES T. Walker, Louisa Thienes, Holston P. Cooper, Catherine Sea-
59 man, Trustee; Catherine Seaman, Trading as L. Seaman and Company; John Zirkelbach, Gus Neuling and Jacob Riber, Francis Harned, Rosa Juchert and Frances Juchert.

The paintiff, Else Lauenstein, complains of the defendant, John Juchert and says, that he is indebted to her upon a certain promissory note, bearing date June 10th, 1890, payable two years after date, with seven per cent (7%) interest for One Thousand Dollars ($1000.00), waiving relief from valuation and appraisement laws, together with attorney's fees, a copy of which note is filed herewith, marked "Exhibit A" and made part of this complaint; that there is due her upon said note, said sum of One Thousand Dollars ($1000.00) together with interest from the 10th day of June, 1894, and a reasonable attorney's fee as in said note provided, making in all the sum of Twelve Hundred Dollars ($1200.00).

Plaintiff further avers and says that the payment of said note was secured by a mortgage upon certain real estate therein ascribed, to-wit:—

Lot Number Twenty-one (21) in Block Number Six (6) in Kumler's Addition to the City of Evansville. Lots numbers Twenty-

three (23) and Twenty-four (24) in Block Number Eleven (11) Kazar's Division, according to the subdivision of said Block made by Eichel and Loewenthal.

Also Lots numbers Five (5) and Six (6) in Block number Seventeen (17) Woodlawn, an Addition to the City of Evansville, all in Vanderburgh County, Indiana, a copy of which mortgage, marked "Exhibit B" is filed herewith and made a part of this complaint.

60 Plaintiff further complaining says, that the following persons have liens upon said real estate by reason of judgments recovered against said Juchert or for judgments upon which he became replevin bail as follows to-wit:

That defendant Emelie Knoll, recovered a judgment against Ernst A. Hoffman and Joseph J. Hoffman, November 7th, 1894, for the sum of Two Hundred and Twenty-four Dollars and twenty-nine Cents ($224.29), upon which said defendant Juchert became replevin bail November 9th, 1894.

That defendant James T. Walker, recovered a judgment against said John Juchert and others January 26th, 1895, for the sum of Four Hundred and Eighty-nine Dollars and sixty-nine cents ($489.69) and costs.

That defendant Louisa Thienes, recovered a judgment against said John Juchert and Joseph J. Hoffman, February 16th, 1895, for the sum of Two Hundred and Seventy-nine Dollars and fifty cents ($279.50) and costs.

That defendant, Holton T. Cooper recovered a judgment against said defendant John Juchert and Joseph J. Hoffman, March 5th, 1895, for Two Hundred and Thirty-six — and seventy-five cents ($236.75) together with costs.

That defendant, Catherine Seaman, trustee, Catherine Seaman trading as L. Seaman and Company, recovered a judgment against said defendant Juchert and one Simon P. Rieber, March 21st, 1895, for Three Hundred and Twelve Dollars and seventy-four cents ($312.74) together with costs.

That defendant John Zirkelbach recovered a judgment against Joseph J. Hoffman and said defendant Juchert, for Two Hundred and sixty-five Dollars and sixty-two cents ($265.62) on the — day of ——, 1895.

That defendant Gus Neubling recovered a judgment against said defendant Juchert, November 13th, 1893, for Eighty-
61 seven Dollars and thirty-nine Cents ($87.39) together with costs.

That defendant, Jacob Rieber, recovered a judgment — said defendant Juchert and Simon Rieber for Ninety-eight Dollars and twenty-five cents ($98.25) and costs on the 14th day of June 1894, before a justice of the peace, and transcript was filed in the Vanderburgh Circuit Court, June 20th, 1894; that Rosa & Frances Juchert have some interest in said real estate.

That defendant, Ulsomer, has a mortgage upon said real estate to secure the notes therein described for the sum of sixteen hundred and fifty-two dollars and forty-five cents ($1652.45).

Plaintiff further avers that all of said claims are junior and subsequent to hers.

Wherefore she asks judgment for Twelve Hundred Dollars ($1,200.00) against said defendant Juchert and an order for the sale of the real estate in said mortgage described and that her lien be declared prior to those of all the other defendants aforesaid, and for all other proper relief.

Paragraph 2. The plaintiff Else Lauenstein, complains of the defendant, John Juchert and says, that said defendant is indebted to her upon a certain promissory note executed by him October 1st, 1890, payable one year after date, in the sum of Five Hundred Dollars ($500.00), together with attorney's fees, waiving relief from valuation and appraisement laws, with seven per cent (7%) interest, a copy of which note is filed herewith, marked "Exhibit C" and made part of this complaint; that there is due her upon said note, said sum of Five Hundred Dollars ($500.00) principal, and interest from the 1st day of April, 1894, together with Forty
62 Dollars ($40.00) as and for an attorney's fee as in said note provided, making in all the sum of Six Hundred Dollars ($600.00).

Plaintiff further avers that in order to secure the payment of said note, said defendant executed his mortgage upon the following described real estate, situate in Vanderburgh County, State of Indiana, to-wit:

Lot Number Twenty-one (21) in Block Number six (6) in Kumler's Addition to the City of Evansville. Lots numbers twenty-three (23) and twenty-four (24) in Block number Eleven (11) Kazar's Division, according to the subdivision of said Block, made by Eichel and Loewenthal.

Also Lots numbers Five (5) and Six (6) in Block number Seventeen (17) Woodlawn, an addition to the City of Evansville, a copy of which mortgage, marked "Exhibit D" is filed herewith and made a part of this complaint.

Plaintiff further complaining says, that the following persons have liens upon said real estate by reason of judgments recovered against said Juchert or for judgments upon which he became replevin as follows, to-wit:

That defendant, Emelie Knoll, recovered a judgment against Ernst A. Hoffman and Joseph J. Hoffman, November 7th, 1894, for the sum of Two Hundred and Twenty-four Dollars and twenty-nine cents ($224.29) upon which said defendant Juchert became replevin bail November 9th, 1894.

That defendant James T. Walker, recovered a judgment against said John Juchert and others January 26th, 1895, for the sum of Four Hundred and Eighty-nine Dollars and sixty-nine cents ($489.69) and costs.

That defendant, Louisa Thienes, recovered a judgment against said John Juchert and Joseph J. Hoffman, February 16th, 1896, for the sum of Two Hundred and seventy-nine Dollars and fifty cents ($279.50) and costs.

63 That Holton T. Cooper, recovered a judgment against said defendant John Juchert and Joseph J. Hoffman March 5th, 1895, for Two Hundred and Thirty-six Dollars and Seventy-five cents ($236.75) together with costs.

That defendant Catherine Seaman, trustee, Catherine Seaman, trading as L. Seaman and Company recovered a judgment against said defendant Juchert and one Simon P. Rieber, March 21st, 1895, for Three Hundred and Twelve Dollars and Seventy-four cents ($312.74) together with costs.

That defendant John Zirkelbach recovered a judgment against Joseph J. Hoffman and said defendant Juchert for Two Hundred and Sixty-five Dollars and sixty-two cents ($265.62) on the — day of —— 1895.

That defendant, Gus Neubling, recovered a judgment against said defendant Juchert November 13th, 1893, for Eighty-seven Dollars and thirty-nine cents ($87.39), together with costs.

That defendant, Jacob Rieber, recovered a judgment against Simon Rieber and said defendant Juchert, for Ninety-eight Dollars and twenty-five cents ($98.25) and costs on the 14th day of June, 1894, before a justice of the peace, and transcript was filed in the Vanderburgh Circuit Court June 20th, 1894, and that Rosa Juchert & Frances Juchert have some interest in said real estate.

That defendant Ulsomer, has a mortgage upon said real estate to secure the notes therein described for the sum of Sixteen Hundred and fifty-two Dollars and forty-five cents ($1652.45).

Plaintiff further avers that all of said claim- are junior and subsequent to hers.

Wherefore, she asks judgment for Six Hundred Dollars ($600.00) against said defendant Juchert and an order of
64 sale for the real estate in said mortgage described and that her lien be declared prior to those of all the other defendants, aforesaid, and that she shall have all other proper relief.

MAIER & HERMAN,
Pltf's Att'y.

"EXHIBIT A."

Note.

EVANSVILLE, IND., *June* 10, 1890.

Two years after date, we or neither of us promise to pay to the order of Else Lauenstein, One Thousand Dollars, and attorney's fees; negotiable and payable at the — with interest at seven per cent per annum, from date, and seven per cent per annum from maturity; interest payable semi annually, and if not paid when due, to bear some rate of interest as the principal, after maturity, until paid; value received without any relief from valuation or appraisement laws.

JOHN JUCHERT.

$1000.00.

Indorsements.
Interest paid to Dec. 10, '90.
" " " June 10, '91.
" " " " 10, '92.
" " " " 10, '93.
" " " " 10, '94.

"EXHIBIT C."

Note.

EVANSVILLE, *Oct.* 1*st*, 1890.

One year after date, we or either of us promise to pay to the order of Else Lauenstein, Five Hundred Dollars, and attorney's fees; negotiable and payable at the — with interest at seven
65 per cent per annum from date, and seven per cent per annum from maturity; interest payable semi annually, and if not paid when due, to bear same rate of interest as the principal, after maturity until paid; value received without any relief from valuation or appraisement laws.

JOHN JUCHERT.

$500.00.

Indorsements.
Interest paid to April 1, '91.
" " " " 1, '92.
" " " " 1, '94.

"EXHIBIT B."

Mortgage.

This Indenture Witnesseth, That John Juchert and Rosa Juchert, his wife, of Vanderburgh County, in the State of Indiana, Mortgage and Warrant to Else Lauenstein of Vanderburgh County, in the State of Indiana, the following Real Estate in Vanderburgh County, in the State of Indiana, to-wit:—

Lot Number Twenty-one (21) in Block Number Six (6) in Kumler's Addition to the City of Evansville. Lots Numbers Twenty-three (23) and Twenty-four (24) in Block Number Eleven (11) Kazar's Division, according to the subdivision of said Block made by Eichel & Loewenthal. Also Lots Numbers Five (5) and Six (6) in Block Number Seventeen (17) Woodlawn, an Addition to the City of Evansville—to secure the payment when the same shall become due, of one certain promissory note of even date herewith, for One Thousand dollars, executed by John Juchert and payable to Else Lauenstein two years after date, with interest at seven (7) per cent. per annum, payable semi-annually, and Attorney's fees. The mortgagor agrees to keep the improve-
66 ments upon said lots insured against loss by fire and for the benefit of mortgagee in a sum not less than One Thousand

dollars, and to pay all taxes and assessments as they become due and payable, and in default of any of the conditions herein set forth, the entire sum hereby secured to at once become due and collectable.

And the mortgagors expressly agree to pay the sum of money above secured, without relief from valuation or appraisement laws.

In Witness Whereof, The mortgagors have hereunto set their hands and seals, this 10th day of June, 1890.

JOHN JUCHERT. [SEAL.]
ROSE JUCHERT. [SEAL.]

STATE OF INDIANA,
Vanderburgh County, ss:

Before me the undersigned, a Notary Public in and for said County, this sixteenth day of June 1890, personally appeared the within named John Juchert and Rose Juchert, his wife, and acknowledged the execution of the within Mortgage.

Witness, my hand and Notarial Seal.

SEBASTIAN HENRICH, [SEAL.]
Notary Public.

"EXHIBIT D."

Mortgage.

This Indenture Witnesseth, That John Juchert and Rose Juchert, his wife, of Vanderburgh, in the State of Indiana Mortgage and Warrant to Else Lauenstein of Vanderburgh County, in the State of Indiana, the following Real Estate in Vanderburgh County, in the State of Indiana, to-wit:—

Lot Number Twenty-one (21) in Block Number Six (6) in Kumler's Addition to the City of Evansville. Also Lots numbers Twenty-three (23) and Twenty-four (24) in Eichol and Loewenthal's Subdivision of Block Number Eleven (11) in Kazar's Division of the South-East Quarter of the North-East Quarter of section
67 Nineteen (19) Town Six (6) South Range Ten (10) West Also Lots numbers five (5) and Six (6) in Block Number Seventeen (17) in Woodlawn an Addition to the City of Evansville to secure the payment when the same shall become due of one certain promissory note of even date herewith, for the sum Five Hundred dollars executed by John Juchert and payable to Else Lauenstein, one year after date, with interest at seven per cent. per annum payable semi-annially and Attorney's fees. The Mortgagor agrees to keep the improvements upon said lots insured against loss by fire and for the benefit of mortgagee, and to pay all taxes and assessments against said Real Estate as they may become due and payable, and in default of any of the conditions herein contained, the whole sum hereby secured to at once become due and collectable; and the mortgagors expressly agree to pay the sum of money above secured, without relief from valuation or appraisement laws.

In Witness Whereof, The mortgagors have hereunto set their hands and seals this first day of October 1890.

JOHN JUCHERT. [SEAL.]
ROSE JUCHERT. [SEAL.]

STATE OF INDIANA,
Vanderburgh County, ss:

Before me the undersigned, a notary public in and for said County, this — day of October, 1890, personally appeared the within named John Juchert and Rosa Juchert, his wife, and acknowledged the execution of the within Mortgage.

Witness, my hand and Notarial Seal.

SEBASTIAN HENRICH, [SEAL.]
Notary Public.

This complaint bears the following endorsements:

The Clerk will issue Summons to Gibson County for John Juchert & Michael Ulsomer. 2 Summons. Vanderburgh County. Filed Nov. 12, 1895. Chas. F. Boepple, Clerk.

68 No. 8443. Else Lauenstein vs. John Juchert, et al. Summons. Superior Court. To December 1895. Maier & Herman, Att'y for plaintiff.

Summons John Juchert & Michael Ulsomer.

STATE OF INDIANA,
Vanderburgh County, ss:

The State of Indiana to the Sheriff of Gibson County, Greeting:

You are hereby commanded to Summon John Juchert & Michael Ulsomer, to appear in the Superior Court of Vanderburgh County, before the Judge thereof, on the Second day of the next Term, to be held at the Superior Court Room in Evansville, on the first Monday of December 1895 to answer the complaint of Else Lauenstein And of this writ make due return.

Witness, The Clerk of said Court, and Seal thereof hereunto affixed, at Evansville, this 12th day of November, 1895.

CHAS. F. BOEPPLE, *Clerk.*

Return of Summons.

Served this writ as commanded by reading to and within the hearing of John Juchert, Michael Ulsomer, Nov. 21, 1895.

JOHN W. TRIBLE, *S. G. C.*

Sheriff's Fees:

Mileage	$2.00
Service	.80
Docket	
Docket Return	
Return	.10
Total	$3.10

69 No. 8443. Else Lauenstein vs. John Juchert, et al. Summons. Superior Court. Fees $3.60. December 1895. Maier & Herman, Att'ys for Plaintiff.

Summons.

STATE OF INDIANA,
Vanderburgh County:

The State of Indiana to the Sheriff of Vanderburgh County, Greeting:

You are hereby commanded to Summon Emelie Knoll, James T. Walker, Louisia Thiemes, Holston P. Cooper, Catherine Seaman, Trustee, Catherine Seaman, trading as L. Seaman and Company, John Zirkelbach, Gus Neubling and Jacon Rieber to appear in the Superior Court of Vanderburgh County, before the Judge thereof, on the Second day of the next Term to be held at the Superior Court Room in Evansville, on the First Monday of December, 1895 to answer the complaint of Else Lauenstein, and of this writ make due return.

Witness, The Clerk of said Court, and Seal thereof affixed at Evansville, this 12th day of November, 1895.

CHAS. F. BOEPPLE, *Clerk.*

Return of Summons.

This writ came to hand Nov. 12, 1895.

Served on the within named by reading except John Zirkelbach and Gus Neubling who were served by leaving true and correct copies of this writ at their last and usual place of residence and Emelie Knoll, Holston P. Cooper, and Catherine Seaman who could not be found in my bail-wick. November 22, 1895.

CHARLES G. COVERT, *S. V. C.*
By HENRY R. SCOTT, *Deputy.*

70 No. 8443. Elsa Lauenstein vs. John Juchert, et al. Summons. Superior Court. Maier & Herman, Att'ys for Plaintiff.

Summons of Frances Juchert.

STATE OF INDIANA,
Vanderburgh County, ss:

The State of Indiana to the Sheriff of Vanderburgh County, Greetings:

You are hereby commanded to summon Frances Juchert to appear in the Superior Court of Vanderburgh County, before the Judge thereof, on the 2nd day of March, 1896, at the Superior Court Room in Evansville, to answer the complaint of Elsa Lauenstein and of this writ made due return.

Witness the Clerk of said Court and Seal thereof hereunto affixed, at Evansville, This 20th day of February, 1896.

CHAS. F. BOEPPLE, *Clerk*,
[SEAL.] By —— ——, *Deputy*.

(A True Copy.)
CHARLES G. COVERT, *S. V. C.*,
By HENRY R. SCOTT.

Return of Summons.

Served on the within named by reading February 20th, 1896.
CHAS. G. COVERT, *S. V. C.*
By HENRY R. SCOTT, *Deputy*.

71 Superior Court, Vanderburgh County, December Term, 1895.

Cross-Complaint of John Zirklebach.

ELSE LAUENSTEIN
vs.
JOHN JUCHERT, MICHAEL ULSOMER, EMELIE KNOLL, JAMES T. Walker, Louisa Thienes, Holston P. Cooper, Catherine Seaman, Trustee; Catherine Seaman, Trading as L. Seaman and Company; John Zirkelbach, Gus Neubling and Jacob Rieber.

The defendant, John Zirkelbach, in the above entitled cause, for cross-complaint against the plaintiff, and his co-defendants, says:

That on the 23rd day of April, 1895, he recovered judgment, in the Superior Court of Vanderburgh County, against Joseph J. Hoffman, and the defendant John Juchert, in the sum of Two hundred and sixty five and 62/100 Dollars, together with all costs of suit, which Judgment became and now is a lien on the property of the said defendant John Juchert.

That the said defendant, John Zirklebach, asks that his lien against the property of the said John Juchert be protected and for all other proper relief.

FREUDENBERG & HOLLOWAY,
Atty's for Zirkelbach.

72 *Disclaimer of Gus Neubling.*

Superior Court, Vanderburgh County, December Term, 1895.

ELSE LAUENSTEIN
vs.
JOHN JUCHERT et al.

The defendant Gus Neubling, by way of disclaimer against the plaintiff and against his co-defendant, says:—

That he disclaims any estate or interest in the real estate described

in plaintiff's complaint. That on the 13th day of November, 1893, said defendant Nuebling recovered a judgment against his codefendant John Juchert in the sum of eighty seven and 39/100 Dollars, and costs of suit, which judgment has been to the said defendant fully paid and satisfied.

Wherefore, said defendant demands judgment for costs herein, and all other proper relief.

FREUDENBERG & HOLLOWAY,
Attorneys for Neubling.

Supplemental Complaint.

Superior Court, Vanderburgh County, December Term, 1895.

ELSE LAUENSTEIN
vs.
JOHN JUCHERT et al.

Else Lauenstein, for supplemental complaint herein, says
73 that this action is brought to foreclose two mortgages upon Lot Twenty Four (24), Block Eleven (11), Kazar's Division, according to the Subdivision of said Block, made by Eichel and Loewenthal, situate in Vanderburgh County, State of Indiana, together with some other real estate; that Francis M. Harned, whose cause of action is consolidated with this, her action, claims title to said Lot Twenty-four (24) by virtue of a tax sale and deed, which sale and deed were made since the execution of her mortgages and has brought his action to recover possession of said real estate.

That since the execution of plaintiff's mortgages, the defendant, John Juchert, conveyed said Lot Twenty-four (24) to one Rosa Juchert, during life with remainder to Frances Juchert, child of said grantor in fee simple; that said Rosa Juchert is a non-resident of the State of Indiana but is collecting through her agent, the rents and profits from said real estate, and paying no taxes and street improvements but absorbs the same to the detriment of this plaintiff and the said Harned; that the rents and profits of said real estate ought to be applied to discharge the liens upon said property and that a Receiver ought to be appointed to collect such rents and profits from said real estate, which plaintiff is informed are ten dollars ($10.00) per month; that said Rosa Juchert is a necessary party to this action and is a non-resident of the State of Indiana and that before she can be notified of the pendency of this action, rent will have been paid, which ought to be applied to the liens on said real estate pending this action.

Wherefore, she asks that a Receiver be appointed until said defendant, Rosa, can be notified of the pendency of this action and that publication be made notifying her of the pendency of this action.

MAIER & HERMAN,
Pltff's Att'ys.

74 *Affidavit of Frederick Lauenstein, Ag't of Elsa Lauenstein.*

Frederick Lauenstein, agent for plaintiff, being duly sworn, says that the statements in the foregoing supplemental complaint are true as he is informed and believes.

F. LAUENSTEIN.

Subscribed and sworn to before me this 29th day of January, 1895.

[SEAL.] PETER MAIER,
Notary Public.

Precipe for Notice for Publication.

The Clerk will please give notice by publication to the defendant Rosa Juchert, a non-resident of the State of Indiana, to appear to this action on the 4th day of April, 1896, being the March Term of said court, being the day fixed by the plaintiff for the trial of this cause.

MAIER & HERMAN,
Plaintiff's Attorneys.

Proof of Publication of Notice.

STATE OF INDIANA,
Vanderburgh County, ss:

Proof of Notice of Publication.

Before me, Louis J. Herman, a Notary Public, this day personally came J. S. Reilly, who being duly sworn, according to law, says that he is Supt. of Advertising of the Evansville Courier, a weekly newspaper published at Evansville, in said County, and that
75 the Notice, of which the annexed is a True copy, was published in said paper, on the 11th day of Feb'y, 1896 and once each week thereafter, for three weeks successively.

J. S. REILLY.

Subscribed and sworn to before me this 13th day of March 1896.

[SEAL.] LOUIS J. HERMAN,
Notary Public.

Notice to Non-Residents.

ELSE LAUENSTEIN
VS.
JOHN JUCHERT, ROSA JUCHERT et al., and FRANCES M. HARNED
VS.
JOHN JUCHERT and ROSA JUCHERT.

Notice by Publication.

In the Superior Court of Vanderburgh County, Ind., March Term, 1896.

Nos. 8443 and 8068, Consolidated.

Notice by Publication.

It appearing by affidavit on file in the office of the Clerk of said court, that Rosa Juchert, one of the defendants, in the above entitled cause, is a non-resident of the State of Indiana.

Notice is hereby given to said Rosa Juchert of the pendency of said actions and that *that* the same are to enforce liens against her real estate and will stand for trial at the next term of said Superior Court, at the Court House in Vanderburgh County, State of
76 Indiana, on the 4th day of April, 1896.

Witness, the Clerk of said court, this 4th day of February, 1896.

CHAS. F. BOEPPLE, *Clerk.*

G. C. FOSTER, *Deputy.*
MAIER & HERMAN,
Plaintiff's Attorneys.

W-11 18 25.

This cross complaint bears the following endorsements: 8443-8068. Superior Court of Vanderburgh County. Filed April 8, 1896, Charles F. Boepple, Clerk.

Superior Court, Vanderburgh County, March Term, 1896.

ELSE LAUENSTEIN
VS.
JOHN JUCHERT, MICHAEL ULSOMER et al.

Cross-complaint, Michael Ulsomer, First Par.

Paragraph First.

The defendant, Michael Ulsomer, for cross complaint against the plaintiff, Else Lauenstein, and his co-defendants herein, says that he is the owner and in possession of Lot No. Twenty-three (23), in

Eichel & Loewenthal's Subdivision of Block Eleven (11), Kazar's Division of the South-east Quarter of the North-east Quarter of Section Nineteen (19), Township Six (6), Range Ten (10), West, Vanderburgh County, Indiana; that he purchased and become the owner of said real estate by virtue of a sale by the sheriff of Vanderburgh County, in an action wherein Thomas N. Beidel-
77 man was plaintiff and John Juchert was defendant, which was upon a judgment rendered on the 17th day of February, 1894, in the Superior Court of Vanderburgh County; that on the 24th day of February, 1894, said property was sold under said judgment and Thomas N. Beidleman become the purchaser thereof, and received a certificate from the sheriff, of said real estate, which Certificate was duly assigned to this cross-complainant by the said Beidelman; and a deed executed to him afterward; that his claim is superior to all other claims against the same, except that of the plaintiff.

Wherefore, he asks that the property, in plaintiff's mortgage described, other than the lot hereinbefore mentioned, be sold to satisfy her claim and that his title to his said real estate be quieted, and that he have all other proper relief.

"EXHIBIT B."

This indenture witnesseth, That John Juchert, of Vanderburgh County, in the State of Indiana, Mortgages and Warrants to Michael Ulsomer and Mary Ulsomer, his wife, of Gibson County, in the State of Indiana, the following Real Estate in Vanderburgh County, in the State of Indiana, to-wit:

Lot No. Twenty-one (21) in Block Six (6) in Kumler's Addition to the City of Evansville.

Also Lots Nos. Five (5) and six (6) Block Seventeen (17) in Woodlawn's Addition to the City of Evansville, according to the recorded plat thereof.

And also lots Nos. Twenty-three (23) and Twenty-four (24) in Eichel & Loewenthal's Subdivision of Block Eleven (11) Kazar's Division of the South-east Quarter of the North-east Quarter of Section Nineteen (19) township Six (6) South, Range Ten (10) West.

78 to secure the payment of a promissory note for sixteen hundred and fifty-two and 45/100 — of even date herewith executed by said Juchert and made payable to the order of said Michael Ulsomer one year after date with six per cent. interest, waiving relief from valuation or appraisement laws, and providing for attorney's fees, also to secure said Mary Ulsomer for fifty dollars, balance due on a promissory note, executed by said Juchert and made payable to the order of said Mary.

And the mortgagor expressly agrees to pay the sum of money above secured, without relief from valuation or appraisement laws.

In witness whereof, The mortgagor has hereunto set his hand and seal, this 7th day of March, 1895.

JOHN JUCHERT. [SEAL.]

STATE OF INDIANA,
Vanderburgh County, set:

Before me, Peter Maier, a Notary Public in and for said county, this 7th day of March, 1895 personally appeared the within named John Juchert and acknowledged the execution of the within Mortgage.

Witness, my hand and Notarial Seal.

PETER MAIER, [SEAL.]
Notary Public.

79 Superior Court, Vanderburgh County, March Term, 1896.

ELSE LAUENSTEIN
VS.
JOHN JUCHERT, MICHAEL ULSOMER et al.

Cross-complaint, Michael Ulsomer.

Paragraph Second.

The defendant, Michael Ulsomer, for further cross-complaint against John Jurchert and his co-defendants, complains and says, that on or about the 7th day of March, 1895, said John Juchert executed to him a promissory note for Sixteen hundred and fifty-two dollars and forty five cents ($1652.45), payable one year after date, with six per cent. interest waiving relief from valuation and appraisement laws, and providing for attorney's fees, a copy of which note is filed herewith, marked "Exhibit A" and made a part hereof: that said note with interest and One Hundred Dollars ($100.00) attorney's fees, is justly due him and wholly unpaid; that said Juchert in order to secure the payment of said note executed and delivered to him a mortgage, of even date with said note, upon the following described real estate, situate in Vanderburgh County, State of Indiana to-wit:

Lot No Twenty-one (21) in Block Six (6), Kumler's addition to the City of Evansville.

Also Lots Five (5) and six (6) Block seven (7) in Woodlawn, an Addition to the City of Evansville, according to the recorded plat thereof.

Also lots twenty-three (23) and Twenty-four (24) in Eichel and Loewenthal's Subdivision in Block Eleven (11) Kazar's Division of the South-east Quarter of the North-east Quarter, Section Nineteen (19) Township Six (6) South of Range Ten (10) West,

80 a copy of which mortgage, is herewith filed, marked "Exhibit B" and made a part of this cross complaint.

This cross-complainant further says that the claim of the plaintiff is superior and prior to his claim upon the *the* real estate in said mortgage described, but that his claim is superior and prior to all liens and claims, subsequent to the date of said mortgage.

Wherefore, he asks that any order made in the foreclosure of plaintiff's mortgage upon the real estate in his mortgage described,

be sold to pay the plaintiff's demand, and such other liens as may be found superior to his, and that he be paid any balance, which may be in the hands of the sheriff, after satisfying all priorities, that his mortgage be foreclosed, that he have judgment for Two Thousand Dollars ($2,000.00) that his lien be established upon said real estate and that he have all other proper relief.

MAIER & HERMAN,
Att'ys for X-Complainant.

8443.

ELSE LAUENSTEIN
VS.
JOHN JUCHERT, HERMAN KNOLL, Adm'r with Will Annexed of Emilie Knoll, Dec'd; JAMES T. WALKER et al.

81 *Cross-complaint of Herman Knoll.*

Herman Knoll says that Emilie Knoll died testate since the Judgment rendered in her favor mentioned in plaintiff's complaint and that he was qualified as Administrator of her estate with the will annexed and he asks that by the decree of the Court his judgment then may be enforced and that it be declared superior to the liens of all other parties hereto—except the plaintiff.

S. A. HORNBROOK,
Att'y for Herman Knoll.

In the Superior Court, Vanderburgh County, March Term, 1896.

ELSE LAUENSTEIN
VS.
JOHN JUCHERT et al.

Cross-complaint of Holston Cooper.

The defendant Holston Cooper for cross-complaint herein says that on the 5th day of March, 1895 he recovered a judgment in the Superior Court of Vanderburgh County against his co-defendant John Juchert for two hundred and thirty-six and 75/100 Dollars and costs, which said judgment became a lien on the real estate in the complaint described from said date but inferior and junior to plaintiff, but prior and superior to all liens suffered and created since said date—

Wherefore he asks that in the foreclosure and sale of the said real estate, his lien be established according to its priority and that his rights be protected and that he have all other proper relief.

WILKINSON,
Attorney for Cooper.

82 Superior Court, Vanderburgh County, March Term, 1896.

ELSE LAUENSTEIN
vs.
JOHN JUCHERT et al.

Cross-complaint of Louisa Thienes.

The defendant Louisa Thienes, for cross-complaint herein says, that on the 16 day of February, 1895, she recovered a judgment against the defendant, John Juchert, for the sum of Two Hundred and seventy-nine dollars and fifty cents ($279.50); that the said judgment became and was a lien upon the real estate in the complaint described, junior and subsequent to all liens suffer- or created prior to said date.

Wherefore, she asks that if the said real estate is foreclosed and sold, under an order of this court, that her rights be protected, and that any surplus remaining, after said plaintiff's demand and all other claims and liens prior to her own are satisfied, may be applied in payment of her claim, and that she have all other proper relief.

S. B. BUCHANAN,
Att'y for Louisa Thienes.

Consolidated. 8443 & 8068.

JOHN M. HARNED & ELSE LAUENSTEIN
vs.
JOHN JUCHERT, ROSA JUCHERT, FRANCES JUCHERT et al.

83 Superior Court, Vanderburgh County, March Term, 1896.

Answer of Guardian ad Litem.

The undersigned having been appointed Guardian ad litem by order of Court for Frances Juchert a minor and defendant in the above entitled causes, for answer to the complaint of said plaintiff and also to the complaint of Francis M. Harned denies each and every allegation therein contained and asks the Court to require strict proof thereof and that the interests of said infant defendant be in all things protected.

W. W. IRELAND,
Guardian.

84 39th Judicial Day, Wednesday, April 15th, 1896, March 1896.

Order 19, P. 449-50-51.

Superior Court, Vanderburgh County.

#8443, #8068.

ELSE LAUENSTEIN, FRANCIS M. HARNED
vs.
JOHN JUCHERT, MICHAEL ULSOMER, EMELIE KNOLL, JAMES T. Walker, Louisa Thienes, Holston P. Cooper, Catherine Seaman, Trustee; Catherine Seaman, Trading as L. Seaman & Co.; John Zerkelbach, Gus Neubling, Jacob Rieber, Roas Juchert, Frances Juchert.

Judgment.

Comes now the defendants James T. Walker, Louisa Thienes, Holston P. Cooper and Catherine Seaman, Trustee and Catherine Seaman, trading as L. Seaman and Company and file their cross-complaint herein and comes the plaintiffs Francis M. Harned by Mattison and Posey, his Att'y and Else Lauenstein by Maier and Herman, her attorneys, and move the court to ap-oint a guardian at litem for Francis Juchert, infant defendant herein, and here the court appoints W. W. Ireland, Esq., an attorney of the Court, as such guardian ad litem, and now comes said guardian and files his answer for said defendant and comes also the defendants Michael Ulsomer by Maier and Herman, his Attorneys, Gus Nuebling and John Zirkelbach by Freudenburgh and Holloway, their attorneys, Herman Knoll, Adm'r of the estate of Emilie Knoll, deceased, by S. Hornbrook his attorney, and the defendant James T.
85 Walker, in person, Holston P. Cooper, by R. C. Wilkinson, his attorney, Louisa Thienes by J. S. Buechanan, her attorney, Catherine Seaman, Trustee; Catherine Seaman doing business as L. Seaman and Company by P. W. Frey her attorney, but the defendants John Juchert, Jacob Rieber and Rosa Juchert being each three times publicly called in open Court come not but herein made default and the Court being satisfied that all of said defendants were duly notified of the pendency of this action more than ten days before the day set for hearing of the same, the cause comes on to be heard, upon the complaints and cross-complaints and the court having heard the evidence and being fully advised in the premises, finds that the plaintiff, Harned, has a tax deed for State and County taxes upon lot number twenty four (24) Block eleven (11) Kazar's Division according to the Subdivision of said Block, made by Eichel and Loewenthal, Vanderburgh County, Indiana, but that said conveyance is not sufficient to pass a title to the same, but that said plaintiff by virtue of said conveyance has a lien upon said real estate for the sum of Ninety-one and 10/100 Dollars ($91.10) which

is prior to all other liens of either of the parties to this action, upon said lot.

The court further finds that there is due the plaintiff Else Lauenstein upon the notes and mortgages in her complaint set out, the sum of Sixteen hundred and ninety-five dollars and fifteen cents ($1695.15) together with One hundred and sixteen dollars and seventy-five cents ($116.75) as and for a reasonable attorney's fee as in said notes and mortgages provided making the sum total Eighteen hundred and eleven dollars and ninety cents ($1811.90) and that this amount so found due said plaintiff is prior to all other claims and liens upon the following described real estate situated in Vanderburgh County, State of Indiana, to-wit:

86 Lot twenty-one (21) Block six (6) in Kumler's addition to the City of Evansville, also lots Twenty three (23) and twenty four (24) in Block Eleven (11) Kazar's Division, according to the Subdivision of said Block, made by Eichel and Loewenthal. Also Lots five (5) and six (6) in Block seventeen (17) Woodlawn an addition to the city of Evansville except the lien of said plaintiff Harned, which is prior thereto upon said lot twenty-four (24). And the court further finds the following defendants and cross-complainants have judgments against the defendant John Juchert, which are liens upon said real estate, except said lot number twenty-three (23) Block number Eleven (11) as follows:

Herman Knoll, administrator from November 7, 1894; James T. Walker from January 26, 1895; Louisa Thienes from February 16th, 1895; Holston Cooper, from March 5th, 1895, Catherine Seaman Trustee, from March 21st, 1895, and John Zirkelbach, from the 23rd. of April, 1895.

The court further finds that there is due the defendant Michael Ulsomer, upon the second paragraph of his corss-complaint the sum of Seventeen hundred sixty dollars and fifty cents (1769.50) together with one hundred twenty dollars and fifty cents ($120.50) Attorneys' fees, making a total of Eighteen hundred and ninety dollars ($1890.00) and that said sum is a lien upon all the above described real estate, since March 7th 1895 and prior to all liens created and suffered thereafter and the Court further finds that the defendant, Ulsomer, has a conveyance for lot number twenty-three (23) Block number eleven (11) in Kazar's Division, which however is subject to plaintiff's mortgage only.

It is therefore considered and adjudged that the plaintiff Harned recover Ninety-one and 10/100 Dollars ($91.10) to be satisfied from the sale of said lot number Twenty-four (24).

87 And it is further considered and adjudged that the plaintiff Else Lauenstein recover of and from the defendant John Juchert the sum of Eighteen hundred eleven dollars and ninety cents ($1811.90) together with costs, the same to be levied and collected without relief from valuation and appraisement laws.

And the defendant Michael Ulsomer recover of and from said John Juchert the sum of Eighteen hundred and ninety dollars ($1890.00) together with costs, the same to be levied and collected without relief from valuation and appraisement laws.

Judgment and Order of Sale.

And it is further adjudged and decreed that the real estate in the complaint and cross-complaint described, towit:

Lot Number Twenty-one (21) in Block Number six (6) in Kumler's Addition to the City of Evansville.

Also lots number- twenty-three (23) and twenty-four (24) in Block Number Eleven (11) Kazar's Division, according to the Subdivision of said Block made by Eichel and Loewenthal.

Also lots five (5) and six (6) in Block number seventeen (17) Woodlawn an addition to the City of Evansville be sold by the sheriff as other real estate is sold on execution, such sale to be without relief from valuation and appraisement laws: that said lot number twenty three (23) Block number eleven (11) shall not be sold if the other real estate shall have been sold for enough to satisfy plaintiff Lauenstein's claim, together with costs and from the proceeds of such sale, said sheriff shall first pay the costs of such sale and of this suit, and from the proceeds of lot number twenty-four (24) in Block eleven (11) said sheriff shall pay to the plaintiff Harned Ninety-one dollars and ten cents ($91.10) in satisfaction of his claim.

88 And the balance of said lot and the proceeds of the remaining property shall be applied to the satisfaction of the judgment of plaintiff Lauenstein, and if not sufficient to discharge her claim in full, then said Sheriff shall sell said lot Number twenty three (23) and from the proceeds satisfy her judgment; and should there be a balance in his hands, from the proceeds of the sale of said lot number twenty-three (23) he shall pay the same to the defendant Ulsomer.

In case the proceeds of said sale other than of lot twenty-three (23) should be sufficient to satisfy plaintiff's claim in full together with costs and leave a surplus in the hands of such sheriff, then the sum so remaining shall be brought into court to be distributed among the cross-complainants according to their respective priorities, as established by this decree, and that after such sale, and after a proper conveyance to the purchasers from said sheriff, all equity of redemption of said defendant or either of them, in or to said real estate, shall be forever barred and foreclosed; and should said real estate not sell for a sum sufficient to satisfy said judgments, then execution may issue for any balance due, which may be levied and collected from any other property of said defendant Juchert subject to execution.

89 *Introduction of Deposition, Ruling Thereon, and Exception Thereto.*

Br. Brownlee of counsel for plaintiff offers to introduce in evidence, the deposition of Harry Scott; to the introduction of which counsel for defendant objects; which objection — by the court overruled; to which ruling of the court the defendant at the time excepted.

Said deposition was introduced in evidence, which is in the words and figures as follows, to-wit:

90 *Notice to Take Deposition.*

STATE OF INDIANA,
Vanderburgh County, ss:

In the Superior Court of Vanderburgh County.

#13635.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

The defendant is hereby notified that on Thursday the 6th day of September, 1906, between the hours of 9 A. M. and five (5) P. M., before Guy L. Eames or some other person authorized to take depositions, at Room 610, #100 Washington Street, Title & Trust Building, in the City of Chicago, County of Cook, State of Illinois, the plaintiff will proceed to take the deposition of Henry R. Scott to be read in evidence at the trial of the above entitled case and will continue to take the same from time to time thereafter between the same hours until the whole be taken.

Dated at Evansville, Indiana, this 30th day of August, 1906.

WM. P. MIEDREICH,
Attorney for Plaintiff.

I acknowledge service of the above notice and waive dedimus this 30th day of August, 1906.

PETER MAIER,
Attorney for Defendant.

91 *Deposition of Henry R. Scott.*

STATE OF INDIANA,
Vanderburgh County, ss:

In the Superior Court of Vanderburgh County.

#13635.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

Deposition of Henry R. Scott.

Deposition of Henry R. Scott, produced and sworn to before me, a notary public, in the office of Ferguson & Goodnow, room 610, 100 Washington Street, Title & Trust Building, in the City of Chicago, in Cook County, State of Illinois, on the 6th day of September, 1906, pursuant to the enclosed notice.

This deposition was taken on the part of the plaintiff, in a certain action now pending in the Superior Court of Vanderburgh County,

and the State of Indiana, wherein Frances A. Miedreich is plaintiff, and Constanze Lauenstein, defendant.

William P. Miedreich, appears for the plaintiff.
Peter Maier, appears for the defendant.

The said HENRY R. SCOTT, being duly sworn to testify the truth, the whole truth, and nothing but the truth, relating to said cause, deposes as follow*ing:*

Direct examination by WILLIAM P. MIEDREICH:

Q. 1. What is your name, age, occupation and residence?
A. Henry R. Scott, Age 36 years, Occupation, Salesman, Residence, 355 La Salle Avenue, Chicago.
Q. 2. How long have you lived in Chicago?
A. I have lived in Chicago now since, well practically four months.
Q. 3. Did your formerly reside in Evansville, Indiana?
A. I did.
92 Q. 4. During what years did you live there?
A. I lived there in 1883 until 1903.
Q. 5. Where did you live while in Evansville?
A. 32 Williams Street for the last several years.
Q. 6. What position did you hold during the year- 1896 to 1900?
A. Deputy Sheriff of Vanderburgh County, Indiana.
Q. 7. Who was your superior?
A. Mr. Charles G. Covert until December 1st, 1898. Then Mr. Martin Koepke.
Q. 8. Is this the same Charles G. Covert, as is named your co-defendant in one of the complaints?
A. I suppose so—he was the only sheriff of that County that I knew, by that name.
Q. 9. To what Court did your duties particularly appertain?
A. Well, particularly to all Courts, although I was in regular attendance at the Superior Court.
Q. 10. What were your duties as a deputy sheriff?
A. General duties of a deputy sheriff—serving summons—The duties of a Sheriff, I might say.
Q. 11. Do you recollect proceedings in the cause of #8443, in which Elsa Lauenstein was plaintiff, and John Juchert Defendant?
A. I have a recollection of several suits against the Jucherts, some in which Elsa Lauenstein was plaintiff.
Q. 12. See, I hand you herewith a copy of the summons issued in this cause, #8443, directed to the sheriff of Vanderburgh County, to summons Frances Juchert to appear at said action, and I ask you to request the Notary Public to mark it Exhibit "A," and make it a part of this deposition.
A. I identify that as a copy of a summons issued in the
93 case in question. So far as I am concerned you may make it a part of this deposition.
Q. 13. Do your recollect receiving the original of this Summons?
A. I have an indistinct recollection of receiving the summons in that case.

Q. 14 Who gave you this summons?

A. Judge Maier, I think.

Q. 15 What directions, if any, did Judge Maier give you when he gave you this summons?

A. I don't remember the directions he gave me, but I suppose, they were the directions as to where to find the defendant.

Q. 16. Where did you look to find the defendant, otherwise than if you followed Judge Maier's directions?

A. Nowhere. The whole transaction is remembered very faintly. It is one of these things that I cannot explain—just an indistinct recollection of the whole transaction.

Q. 17. Did Judge Maier tell you the house number, or location where the then defendant, Frances Juchert could be found?

A. I think most likely, he did.

Q. 18. What time was this summons given to you?

A. I couldn't say as to that.

Q. 19. Do you recollect using the City directory to ascertain her address?

A. I do not.

Q. 20. Where was this summons served?

A. I think out in, what I would call, my end of the town, on outer Division Street, Williams or John streets—out in that locality somewhere—one of those streets.

94 Q. 21. I hand you herewith, the City Directory of Evansville, Indiana, for the year 1895, and ask you to turn to page 340, and under the name of Juchert, state whether or not, the summons was served on either one of the parties, whose names are there given?

A. I could not say as to that. I think not. I did not Serve the summons on any other person than Frances Juchert.

Q. 22. You served the summons, however, you state, in that locality?

A. To the best of my knowledge and belief, yes.

Q. 23. Now, how did you serve it?

A. Well, by reading, as the return shows.

Q. 24. In whose presence was it read?

A. I do not know—cannot remember.

Q. 25. Was any one present at the time this summons, or pretended summons was to have been read?

A. I think so, as I do not ever remember of serving a summons on a minor, unless somebody was present.

Q. 26. Was there one or more persons present when the summons was served?

A. I do not know whether there was more than one person otherr than the defendant or not.

Q. 27. Was that person masculine or feminine?

A. I think—I have a very indistinct recollection, but I think feminine.

Q. 28. How old did the person served, appear to be at that time?

A. Well, I don't know hardly, how to answer that, because the whole thing is indistinct.

Q. 29. You read the summons to her?

A. Yes.

95 Q. 30. You remember that?

A. To the best of my knowledge and belief.

Q. 31. You looked at her in doing so?

A. Well, I naturally did.

Q. 32. And yet you do not remember how old she appeared to be?

A. No.

Q. 33. Was she a beunette or a blond-?

A. That I couldn't say.

Q. 34. Was she clad as a visitor or as one of the family?

A. That I couldn't say.

Q. 35. Do you say that you served her at 2202 Division Street?

A. No, I do not say that, because I don't know.

Q. 36. Did she appear to be frightened?

A. That I couldn't say.

Q. 37. Can you give any of her personal description?

A. I cannot.

Q. 38. Can you describe the person that was present when this summons was served?

A. I cannot.

Q. 39. When did you first become acquainted with this defendant, Frances Juchert?

A. Well, I don't know when I became acquainted with the defendant—I don't know as I ever was what you might call acquainted with her, to the common acceptance of the term.

Q. 40. Granting that you served her, as you state, how often since said time, have you seen her?

A. Well, that I don't know. I may have known her, and not have known her name, as from what you said, I certainly must have been in company where she was, but not to say that I ever knew her name.

96 Q. 41. You do not know whether the person you served was the plaintiff in these present cases, in which this deposition is to be used.

A. Well, I can't say that. I know that my usual proceeding in serving a summons upon some person whom I did not know, was to ask them their name and then serve the summons.

Q. 42. Did you do that in this instance?

A. I certainly must have, or I could not serve the summons, because up until that time, I did not know who to serve for Frances Juchert.

Q. 43. Whom did you ask?

A. I don't know. I may have asked several persons whom I came in contact with at the house.

Q. 44. Was that person a male or a female?

A. I can't remember. I think it must have been a female, whom, to the best of my recollection, was there at the time.

Q. 45. Do you know what relation this party bore to the defendant?

A. I do not.

Q. 46. You served this summons on the person pointed out to you to be Frances Juchert, without knowing personally whether or not she really was Frances Juchert, and now do not remember who told you that she was?

A. I served the summons in this case, which this appears to be a copy of, although the return is written on it, on the party whom I believed to be Frances Juchert.

Q. 47. You are not positive whether or not she was Frances Juchert, are you?

A. Well, I can't say that I am. It seems that if I had
97 served the summons for Frances Juchert, on somebody else, other than Frances Juchert, I would have been told so at the time.

Q. 48. Who would have told you so?

A. The parties present.

Q. 49. You cannot describe the party who would likely have told you so?

A. No—I can't describe either of them.

Q. 50. Was this the place that Judge Maier directed you to go?

A. I think so.

Q. 51. Your assertion and your return on this copy of summons, is entirely based upon the statement made by the person, who was in the presence of Frances Juchert, at the time this service was made?

A. I won't say that. I may have asked Frances Juchert herself, if she was Frances Juchert, and she may have said yes—or I may have asked the person present, I can't answer as to that.

Q. 52. Can't you give a more definite statement as to where this summons was served?

A. I cannot.

Q. 53. But it was served at the place where Judge Maier directed you to go to make the service?

A. To the best of my knowledge and belief, yes.

Q. 54. You made the return endorsed on this summons.

A. Yes sir.

Q. 55. Do you know when this summons was served? What time of the day?

A. No I do not.

Q. 56. The service, or pretended service, that you have related was the only one you made in obedience to the demand of the summons?

98 —. Oh, yes—that is, the service of the summons of which this is a copy. I may have even left a copy at the time, or intended to have left a copy—instead of leaving the copy, left the original summons, and made my return on the copy.

Q. 57. When next did you see this copy, after you made your return thereon?

A. After I made my return, I do not remember of seeing a copy until you brought it here to Chicago, a week or so ago.

Q. 58. Were you present in Court at the time that the judgment in case #8443 was rendered?

A. I couldn't say as to that.

Q. 59. Do you know whether or not you were present on April 5th.

A. I do not. I may have been present on April 5th, if judgment was rendered on that day. I may have been called down to the office.

Q. 60. Do you know what became of the original summons?

A. I do not. As I said before, the only explanation I can give as to that, is, that I made a copy of the original summons, intending to give to the defendant, or the party, who was with her, and instead of giving a copy, gave the original summons by mistake, and made my return on the copy, and the fact that that was a copy of the original summons, was wholly unknown to me until you showed it to me here in Chicago.

Q. 61. Can you describe the physical appearance of the house in which this summons was served?

A. No, I cannot.

Q. 62. Was it frame or brick?

99 A. That I couldn't say.

Q. 63. Was the *ow*man elderly or youthful?

A. I couldn't say as to that.

Q. 64. You cannot describe the personal appearance of the party served?

A. No I cannot.

Q. 65. Nor of the person in whose presence she was when served?

A. I cannot.

100 Cross-examination by PETER MAIER:

Q. 1. The summons that has been produced to you by counsel for the plaintiff, state if that is all in your hand-writing.

A. It is. It is a copy made out on the form that the sheriff kept in the sheriff's office.

Q. 2. And your only way to account for that is, that by mistake, you left the original with the defendant and made the return on the copy, thinking it was the original?

A. Yes.

Q. 3. You were in the position as deputy sheriff how long when this service was made?

Mr. WM. P. MEIDREICH: I object to that question as not being cross-examination.

A. I took the position as deputy sheriff, I think, on October 1st, 1895.

Q. 4. I will ask you if you had large experience in serving summons on minors or adults?

Mr. WM. P. MIEDREICH: To which above objection is repeated.

A. Yes. I had quite a bit of experience.

Q. 5. I will ask you if you knew that to serve a minor properly you would have to read the summons to him?

A. Yes sir.

Q. 6. You state that you recollect that I brought this summons in this case to your office. Have you a distinct recollection of the instructions I gave you at that time?

A. No. I have not a distinct recollection. The whole affair as I remember it, is indistinct.

101 Q. 7. Let me refresh your memory—If I didn't ask you to be sure and make service of this defendant; that it was necessary to do so?

A. I remember of your bringing in the summons in that case. The instructions that you gave me, I do not remember exactly.

Q. 8. I will ask you if you, to the best of your knowledge and ability, tried to serve the defendant with the process that *it* was handed to you?

A. I did.

Q. 9. You knew that Frances Juchert, as it was written on the summons, was the name of the female?

A. Yes Sir. I think you told me that it was a female.

Q. 10. I will ask you furthermore, if I was not solicitous to have a proper service made of this summons when I *have* it to you?

A. I think you was.

Q. 11. Did you know her father, Mr. Juchert, personally?

Mr. WM. P. MIEDREICH: I object to that question as not being cross-examination.

A. Yes. John Juchert, her father,—I knew him.

Q. 12. You knew John Juchert?

A. Yes sir.

Q. 13. Did you know Rosa N. Juchert?

A. I think I have made services on Rosa N. Juchert—However, I am not positive.

Q. 14. Did you know she was the mother of Frances Juchert?

A. I don't remember.

Q. 15. This having been over ten years, I will ask you whether during this time, this matter has been brought to your attention until Mr. Miedreich brought it to your attention.

102 Mr. WM. P. MIEDREICH: I object to that question for the same reason.

A. No.

Q. 16. Mr. Miedreich asked you if you remembered the house or the appearance of the parties present when the service was made, and you answered you did not. I will ask you if you remember the appearance and house of any other defendant you served about that time with a summons, with whom you were not personally acquainted?

Mr. WM. P. MIEDREICH: To which question the same objection is made.

A. Not without something happening that would refresh my memory.

Q. 17. You can think of nothing now that would refresh your memory in regard to this service being made by you at the time?

A. Why, I could not. It was impossible for me to remember every summons I served. What makes me remember this, is the fact that you yourself brought in the summons and gave directions as to the service.

Q. 18. As you stated before, I wanted this service made through you, and I will ask you now if, to the best of your intention, — made the service on the defendant?

A. I did.

Q. 19. Do you know of any reason why this service should not have been made as endorsed on this summons by you?

A. I do not. I never said that I served any person if I did not. I never made a false return knowingly.

103 Q. 20. I will ask you, if not the object of your office was to obey the law and to do what the law requires of your?

A. It was.

Q. 21. Is there anything else you would like to explain in this matter?

A. I cannot thing of anything else that I would care to explain.

Q. 22. I will ask you this question, further—You had charge of the sheriff's office entirely—that is to say, you did the chief of the work, kept the books and managed things generally?

A. Yes, During Mr. Covert's term, I did quite a bit of it, Mr. Covert kept most of the books—that is, the boo*k* in the sheriff's office. I attended to the fee judgments in the Clerk's office myself, but so far as the cash book and things of that kind, to which this does not seem to pertain, Mr. Covert did most of that himself—I assisted.

Mr. SCOTT:

Q. 23. Is it not your opinion now, that you made that service upon Frances Juchert at the time, and in the manner stated by the return?

Mr. WM. P. MIEDREICH: I object.

A. Yes sir.

104 Redirect examination by WM. P. MIEDREICH:

Q. 1. Judge Maier, in giving you directions to serve this summons, was solicitous about making the service?

A. That is one thing that makes me remember the case.

Q. 2. You served the summons according to his direction?

A. Yes.

Q. 3. You served the summons upon the person who was pointed out to you to be Frances Juchert.?

A. The party may have been pointed out, or I may have asked the party myself.

Q. 4. You served the identical person that Judge Maier wanted you to serve?

A. I think so.

Q. 5. Did judge Maier at the time he gave you these directions, give you the house number at which the defendant could be found?

A. I think most likely, he did.

Q. 6. Will you ask him what house number that was?

A. He may have told me the house number. He may have told me that she was out on one or two at some of her relatives, and I may have looked in the directory.

Q. 7. Do you think it quite probaly, that the residence given in this 1895 directory of the Jucherts, in your part of the city, as #2802 Division Street, was the place where the service was made?

WITNESS: Do I think it likely?

Wm. P. MIEDREICH: Yes sir.

A. Yes it is likely, because I think I served the summons out in that end of town somewhere.

Q. 8. The place where you served the summons was near to the pottery, that which is now the Crowns Pottery?

105 A. I think that Judge Maier gave me the house number and I don't know that I looked into the directory. It might be possible that she was with some other family at the time.

Q. 9. Do you know whether or not Judge Maier gave you the house number?

A. I do not.

Q. 10. You do not know where you got the house number?

A. I don't.

Q. 11. Can you give me some mark or identity of the person you served?

A. I cannot.

Q. 12. Do you remember of seeing any children about the place?

A. I do not.

Q. 13. Do you remember the appearance of the elderly woman in charge of the place?

A. No, I do not.

Q. 14. In answer to Mr. Maier's question as to whether or not you served Rosa N. Juchert, you stated you believed that you served her once with summons—was that in this case?

A. That I couldn't say.

Q. 15. There was a case of Frances Harnard against John and Rose N. Juchert in October 1895. Did you serve a summons on her at that time?

A. I don't know.

Q. 16. Can you not by some means or other, identify the house in which the service was made?

A. No. If I could do that, I could go a whole lot farther.

HENRY R. SCOTT.

106 *Certificate of Notary Public.*

STATE OF ILLINOIS,
County of Cook, ss:

I, Guy L. Eames, a notary public within the aforesaid county, hereby certify that the above Henry R. Scott, was by me first duly sworn according to law, to testify the trust, the whole truth, and nothing but the truth, relating to said cause; that his testimony was reduced to writing by Miss Anna Schallerer, a disinterested person, in my presence and under my directions; that the said plaintiff appeared by Wm. P. Miedreich, her attorney, and the said defendants appeared by Judge Maier, their attorney and said deposition was taken at the office of Messrs. Ferguson & Goodnow, at room 610 number 100 Washington Street, Title & Trust Building, in the City of Chicago, County of Cook, and State of Illinois, on the 6th day of September, 1906 between the hours of 9:00 o'clock A. M. and 5:00 of said **day.**

In testimony whereof, I have hereunto set my hand and notarial seal, this sixth day of September, 1906.

[SEAL.] GUY L. EAMES,
Notary Public.

107 *Statement of Costs.*

CHICAGO, *Sept.* 21, 1906.

Mr. Wm. P. Miedreich, Attorney at Law, Evansville, Ind., in Account with Guy L. Aemes, Notary Public, 610-100 Washington St., Chicago, Ill.

To services, taking deposition of Henry R. Scott, in case, Frances A. Miedreich vs. Constanze Lauenstein—

To cash paid stenographer, twenty (20) pages at fifty cents.	$10.00
To cash paid witness fee	1.10
To cash paid postage	.10
To services, swearing witness, certifying and returning deposition	1.00
	$12.20

Received payment,

GUY L. *AEMES,*
Notary Public.

108 Counsel for plaintiff also offers and introduces in evidence the summons and return in said case, which are in the words and figures as follows, to-wit:

Summons, Frances Juchert.

Superior Court.

#8443.

ELSA LAUENSTEIN
vs.
JOHN JUCHERT et al.

Summons.

M. & H., *Att'ys for Plaintiff.*

STATE OF INDIANA,
Vanderburgh County, ss:

The State of Indiana to the Sheriff of Vanderburgh County, Greetings:

You are hereby commanded to summon Frances Juchert to appear in the Superior Court of Vanderburgh County, before the Judge thereof, on the 2nd day of March, 1896, at the Superior Court Room in Evansville, to answer the complaint of Elsa Lauenstein, and of this writ make due return.

Witness the Clerk of said court and Seal thereof affixed, at Evansville this 20th day of February, 1896.

[SEAL.] CHAS. F. BOEPPLE, *Clerk,*
By —— ——, *Deputy.*

A true copy.
CHARLES G. COVERT, *S. V. C.,*
By HENRY R. SCOTT, *Deputy.*

"Exhibit —."
GUY L. EAMES,
Notary Public.

Return of Summons.

Served on the within named by reading February 20th, 1896.

CHAS. G. COVERT, *S. V. C.,*
By HENRY R. SCOTT, *Deputy.*

109 *Direct Examination of Frances Miedreich.*

FRANCES MIEDREICH, after being duly sworn, testified as follows:

Direct examination by Hon. JOHN BROWNLEE:

Q. You may state your name?
A. Frances Miedreich.

Q. You are the plaintiff in this case?
—. Yes sir.
Q. Your name now is Frances Miedreich?
A. Yes sir.
Q. What was it in February 1896.
A. Frances Jouchert.
Q. Where were you living in February, 1896?
A. Haubstadt, Gibson County, Indiana.
Q. How long had you been living there prior to February 1896?
A. My father took me there June 18, 1892.
Q. How long did you continue to live there after February 1896?
A. Until about '97 I suppose.
Q. In '97?
A. Yes sir in August.
Q. Where was your father living during that time?
A. He was living with my aunt at the same place I was.
Q. In Haubstadt?
A. Yes sir.
Q. What was the name of the head of that family?
A. Michael Ulsemer and Mary Ulsemer.
Q. What relation did they bear to you at that time?
A. Aunt and uncle.
Q. Who, at that time, under an order of Court, had your
110 Custody?
A. The custody was given to my aunt.
Q. Your father and mother had been divorced some years prior?
—. Yes sir.
Q. What year, if you remember?
A. 1892 I believe.
Q. 1892?
A. Yes sir.
Q. Whose custody was you first put in after the divorce was granted.
A. My aunt's.
Q. Have you any recollections of any proceedings in Court in which your were placed in her custody?
A. Yes sir, I was present.
Q. How long was that prior to February 1896?
A. That was in '94.
Q. '94?
—. Yes, sir.
Q. Well where was your mother living at that time?
A. I suppose in the City but I don't know; I didn't go to see her.
Q. Your don't know?
A. No sir I didn't go to see her.
Q. Was she in St. Louis about that time?
A. That was the report, I don't know.
Q. You don't know?
A. No sir.
Q. You had not seen her prior to that?
A. No sir.

Q. You and your father lived with the same family?
A. Yes sir.
111 Q. With you- aunt and uncle?
A. Papa was sick there at Aunt Mary's.
Q. In this case of Lauenstein against you and your father and mother, was you at any time served with any papers or summons?

Objection to Interrogatory, Ruling & Exception.

To which question counsel for defendant objects for the reason that it is immaterial whether she was served or not; which objection is by the Court overruled; to which ruling of the Court the defendant at the time excepted.

Q. Was you served with any summons or papres in that case?
A. No sir.
Q. Where were you during the month of February, 1896?
A. Haubstadt.
Q. If at any time during that month of February, 1896, you were in Vanderburgh County?
A. Not since the vacation, the summer before the February. I was not down during that winter.
Q. About that time did you have an aunt or uncle living on Division Street in this City?
A. She might have been living there but I was not at her house.
Q. Did you ever at any time visit the house of your aunt or uncle on Division Street?
A. No sir, I did not.
Q. Did you ever visit that aunt or uncle in this city?
A. Not up to this date, I never have.
Q. During February 1896 what were you doing?
A. I was attending school at Haubstadt.
Q. What school were you attending?
A. The Catholic.
112 Q. Who had charge of the schools?
A. Sister Beatrice and Father Ewers.
Q. They had charge and control of the school?
—. Yes sir.
Q. You were there at school every school day during that month?
A. Yes sir.
Q. At any time that you were absent from school, during the time you attended that school, what would you have to do in the way of excuses?
A. It was the custom of Sister to require excuses.
Q. To account for your absence?
A. Or to excuse ourselves if absent.
Q. Did you make any excuse during the month of February, 1896?
A No sir, I have a perfect recollection.
Q. You were at school during every day of that month?

A. Yes sir.
Q. Every school day?
A. That was my last year of school and it was very important that I should be there.
Q. When did you quit your residence in Haubstadt?
A. In August, 1897.
Q. 1897?
A. Yes sir.
Q. Where did you live after that?
A. After 1897?
Q. Yes?
A. With my aunt on Goodsell Street. Her name is Mrs. Rausch and she is still living there.

Q. This aunt that lived on Division Street that you said
113 you never visited her name was Juchert at that time?
A. Yes sir.

Q. And what is her name now?
A. Sielerman.
Q. She married your father's brother?
A. Yes sir.
Q. When did you first learn or receive any knowledge that any suit had been brought against you by Elsa Lauenstein or Frances Hornad?
A. Last year in February, after my husband looked it up.
Q. That was your first knowledge you had that there had been any suit brought?
A. Yes sir.
Q. That was the first knowledge you had that any judgment had been rendered against you?
A. Yes sir.
Q. Or any property had been sold?
A. Yes sir.
Q. How did you come to ascertain any knowledge of this last year?
A Well all of my friends naturally supposed I should have something, papa having all of those houses, and they told me to have it investigated.
Q. You were advised to investigate the matter?
A. Yes sir.
Q. You made an investigation?
A. On the 28th of February of last year.
Q. When were you born?
A. June 21st, 1883.
Q. When were you baptised?
A. June 23rd, the same year.

Q. Who baptised you?
114 A. Father Ewers of Haubstadt.

Q. Of the Catholic Church?
A. Of the Catholic Church there.

Cross-examination of Frances Miedreich.

Cross-examination by Hon. P. MAIER:

C. Q. Where were you born?
A. At Haubstadt, Indiana.
C. Q. Your father did business in this City?
A. Yes sir.
C. Q. Your father and mother lived in this town?
A. They moved here and then they moved back.
C. Q. About what time?
A. I was a few years old.
C. Q. After you were born?
A. Yes sir.
C. Q. And you lived where when they lived here?
A. In this City on Columbia.
C. Q. About how long did they live there?
A. Oh, I could not say but for sometime.
C. Q. How?
A. For sometime.
C. Q. How many years, can you tell?
A. Oh, perhaps one or two, I can't tell and then they moved a square further and papa built some new houses and that is where they lived at the time they were divorced on Columbia Street.
C. Q. At the time of the divorce, when was that?
A. 1892.
C. Q. Now where did you live before they were divorced, when they separated?
115 A. Before that I lived with my mother until the agreement was that my mother should have me during the term of school and father during vacation. Papa took me in April 1892 and promised to bring me back but he didn't do it. I went to Haubstadt in 1892 in June and remained there until 1897.
C. Q. Now during all of this time you were living with Michael Ulsemers?
A. Yes sir.
C. Q. His wife was a sister to your father?
A. Yes sir.
C. Q. Now I will ask you if anything was ever said by your uncle to you about this suit?
A. No sir.
C. Q. Don't you know that he was in this very suit himself?
A. I suppose he was but he didn't say anything to me.
C. Q. Didn't he talk about your father owing him $1500 or $2000?

To which question counsel for plaintiff objects.
COURT: I think it is a proper cross examination.

C. Q. Your uncle Ulsemer had a mortgage on this same property the Lauensteins had?
A. According to the record.

C. Q. He brought suit the same time Lauensteins did to foreclose this mortgage?

A. I didn't know about it.

C. Q. Didn't your uncle talk about it at home?

A. No sir.

C. Q. Don't you know he was very much exercised about loosing that money?

A. Perhaps he was but he didn't tell his business affairs to me.

116 — Q. Don't you remember he tried to buy the property and when he found it was so high he would not bid on it?

A. No sir.

C. Q. You never heard him say anything about it?

A. No sir.

C. Q. Didn't he tell you that he had bought a piece of property that was sold on your mother's judgment for alimony, that Mr. Wedding had bought it in and he paid Mr. Wedding $500?

A. He didn't tell me his affairs.

C. Q. You remember about him going to town about time suit was pending?

A. I don't remember him coming down. I didn't come with him of course, I would not remember as it didn't concern me

C. Q. You said something about people told you you ought to get something?

A. After I grew up to a certain age.

C. Q. Didn't you know that your father didn't pay his debts?

A. That was his fault.

C. Q. If he didn't pay his debts why should anything be left to you?

Objection to Interrogatory, Ruling & Exception.

To which counsel for plaintiff objects for the reason that it is not proper cross-examination; which objection is by the court overruled; to which ruling of the Court the plaintiff at the time excepted.

C. Q. Why should there be anything for you when he didn't pay his debts?

A. Why should there be anything for me?

C. Q. Yes, why should there be anything for you?

117 A. Well, I don't know; if I have been older I would have known more about it. Friends of mine thought it would not be more than justice that I should get something. These people didn't know the details of his affairs.

C. Q. Don't you know that your uncle Ulsermer, that you lived with, lost over $2000?

A. I don't know about that.

C. Q. You said that after going there in 1892 you was never here or never visited here at all?

A. I came on a visit to my aunt on Goodsell street.

C. Q. You came to visit whom?

A. My aunt on Goodsell street but I never visited my other aunt at all.

C. Q. How long would you stay when you visited?

A. I would have to be back the next day for school.

C. Q. During the summer you had no school?

A. Uncle would bring me down sometimes.

C. Q. Would you stay all night?

A. Very seldom.

C. Q. Did you say that you didn't visit your uncle on Division Street?

A. He had been dead for years.

C. Q. You had cousins?

A. Yes sir, but I didn't call on those people, in fact I never went to see them; I have never been in their house.

C. Q. Now when this suit was brought you say your uncle never said anything to you about it?

A. No sir.

C. Q. Never talked to his wife about the money he lost
118 on your father?

A. I never heard their conversation.

C. Q. Your father lived there?

A. He was sick there.

C. Q. At Ulsemers'?

A. Yes sir.

C. Q. When did he die?

A. In 1901.

C. Q. In 1901 what month?

A. July, 1901.

C. Q. What time did your mother die?

A. 1901 I think in the spring; it might have been in March 1900 but I think it was in 1901, the same year papa died.

C. Q. You say you made inquiries; is it not a fact *is it not a fact* that your husband was the only one who told you about it?

A. No sir.

C. Q. About this matter?

A. As a child I didn't remember things and people would often ask me why I didn't have the matter looked up and after we were married my husband looked it up.

C. Q. He got this thing started?

A. Well not exactly It had been in my mind for sometime to have it started.

C. Q. Give the date of your marriage?

A. November 30, 1905.

C. Q. What month, November 30th?

A. Yes sir.

C. Q. 1905?

—. Yes sir.

119 C. Q. Before you were married had any one said anything to you about this matter?

A. Oh in a way the people would talk, those that I called on and visited. We would speak of it like one will in a conversation.

C. Q. They would talk about your father having property?
—. Yes sir.
C. Q. You knew he didn't have any?
A. I evidently knew I didn't.
C. Q. You knew he had none before he died?
A. I didn't know all of his business exactly.
C. Q. You moved down here when?
A. 1897.
C. Q. Lived here all the rest of the time?
A. Yes sir.
C. Q. Where did you live?
A. With my cousin and then I went to school.
C. Q. You lived with your aunt?
A. With my cousin; that was in 1897 and I lived with her about three years or perhaps two.
C. Q. Three years?
A. Say two years; I don't exactly know how long.
C. Q. Then you went away?
A. Yes sir
C. Q. Where is your cousin living?
A. On Edgar Street.
C. Q What cousin was this you lived with?
A. My aunt's daughter, the aunt that lives on Goodsell Street.
C. Q. You said something about people talking and saying you ought to have something, when did you first hear that?
120 A. That was about 1897 or something like that after I grew older, sixteen or eighteen years old. When I was a child I did not care whether I had anything or not, I was too young but when I grew to a certain age it was on my mind, that if I had something it would be easier for me to make my way in the world.
C. Q. Don't you know Mr. Ulsemer kept you because you had nothing? Your father had nothing.
A. That was an agreement between papa and him. I had nothing to do with it.
C. Q. You knew your father had no money?
A. I didn't know all his affairs.
C. Q. You knew he was being kept there by your uncle, Mr. Elsemer?
A. Perhaps they regarded it as an act of charity.
C. Q. Now from 1892 to 1897 you lived with Ulsemers?
A. Yes sir.
C. Q. Didn't you come occasionally to the City?
A. In vacation sometimes I did. I didn't come very often.
C. Q. Did you come to town?
A. Once in a while.
C. Q. Can you tell when that was?
A. I could not remember the exact date. Whenever I did come down I would go to my aunt's on Goodsell Street, no place else.
C. Q. You were born in 1883?
A. Yes sir.
C. Q. In '96 you were sixteen years old?

A. I would be thirteen that June.

C. Q. Now you were a girl and didn't care anything about property and knew nothing about it?

121 A. Well I was twelve.

C. Q. Couldn't this summons have been served on you without you knowing it?

A. I would remember something like that; I have a perfect recollection of things that happened when I was a little girl and anything so unusual I would remember Now when anything like that happened I would remember it.

C. Q. Now when was this question raised, about summons being served on you and by whom?

A. After my husband looked it up.

C. Q. He was the man who found it out?

A. He certainly is; he had the records.

Redirect Examination of Frances Miedreich.

Redirect examination by Mr. BROWNLEE:

R. D. Q. Mr. Maier asked you about visiting during vacation?

A. I had vacation from June until September. School closed the 15th or 17th of June until September.

R. D. Q. During the month of February, what visits did you make to your aunt on Goodsell Street, if any?

A. None at all.

R. D. Q. What visits did you make to any one during the month of February, 1896?

A. I didn't come down during that month at all. It was severely cold then.

R. D. Q. At the time you were living with Ulsemers, what knowledge, what specific knowledge, if any, did you have of the condition of your father's property?

A. Well, I didn't know much about it. I knew papa was at Aunt Mary's home and was sick there.

122 R. D. Q. You knew he had real estate here?

A. Yes sir.

R. D. Q. When did you first learn that he had made this deed to you?

A. I didn't know anything about it until my husband looked it up.

R. D. Q. You didn't know about it until then?

A. I didn't know I had an interest in the property.

R. D. Q. Who first called your husband's attention to the fact that you might have an interest in it?

A. I don't remember but he and I often spoke of it.

R. D. Q. After you were married?

A. Yes sir and he said he believed he would look it up.

R. D. Q. It was through these talks, that you and he had, that induced him to look up the records?

A. Yes sir.

R. D. Q. Have you any recollection of any one at Haubstadt, who suggested that you should look up this property?
A. Mrs. Betella. She often spoke to me about it.
R. D. Q. They were friends?
A. Yes sir.
R. D. Q. Did you ever live with them?
A. Yes sir for a while.
R. D. Q. Where is Michael Ulsemer and wife?
A. Both are dead.
R. D. Q. How long have they been dead?
A. Uncle Mike died in the fall of 1901; I don't remember exactly when and my aunt died in March 1897.
R. D. Q. Then you went to Betellos to stay?
A. Yes sir.
123 R. D. Q. You- aunt died in 1897?
A. Yes sir and was buried on St. Patrick's Day.
R. D. Q. And your uncle died in 1901?
A. Yes sir.

Recross-examination by PETER MAIERS:

R. C. Q. How long was your father living there before he died?
A. Well he was living there in 1896 and when he was able to get about he would come to the City. He came when I went to Betellos in August. I think it was in August and after his sickness.
R. C. Q. How long did you stay?
A. I cannot tell.
R. C. Q. Don't you know he staid with his aunt and uncle?
A. He staid on Goodsell Street with my aunt.
R. C. Q. How long?
A. Just during his sickness and after he was able to be about.
R. C. Q. During the time you was at Ulsemers, wasn't your father served with a summons?
A. If he was I was at school and didn't know it.
R. C. Q. Your would not be at school on Saturdays and Sundays and after school closed?
A. I would have no recollection of a summons being served on him.
R. C. Q. You don't remember of a summons being served on him?
A. No sir.
R. C. Q. You know he was being sued?
A. Not particularly.
124 R. C. Q. You knew your own uncle sued him?
A. Well they didn't discuss their affairs with me. I was nothing but a child.

125 CLARA SIELERMAN, after being duly sworn, testified as follows:

Direct Examination of Clara Sielerman.

Direct examination by Mr. JOHN BROWNLEE:

Q. What is your name?
A. Clara Sielerman.
Q. Your first husband's name was Juchert?
A. Yes sir.
Q. Was he an uncle of Mrs. Miedreich?
A. Yes sir.
Q. Where did you live in 1896?
A. In '96?
Q. What street did you live on?
A. I don't know.
Q. Did you ever live on Division Street?
A. Yes sir.
Q. About how long ago?
A. It has been several years ago.
Q. How long did you live there?
A. I cannot tell exactly how long.
Q. Did you live there several years?
A. Yes sir.
Q. How long since your first husband died?
A. Seventeen years I think.
Q. Well you know Mrs. Miedreich?
A. Yes sir.
Q. She is a niece of your first husband's?
A. Yes sir.
Q. Did she ever visit your house?
A. No sir.
Q. Never did?
A. No sir.

Q. Was she ever at your house on Division Street?
126 A. No sir.

Q. Was she ever served by any officers with papers at your house on Division Street?
A. No sir.
Q. Was any person ever served there with papers?
A. No sir.
Q. And she never at any time visited you in this City?
A. No sir.

Cross-examination of Clara Sielerman.

Cross-examination by Judge MAIER:

C. Q. Were you on good terms?
A. Yes sir but, of course, Frances never visited us. I guess she didn't know where we lived.
C. Q. Did her mother?

A. No sir not while I was in Evansville she didn't.
C. Q. Did her father ever visit you?
A. Her father was at our house one time and that is all. He was selling cigars across the street and he talked to me at the fence.
C. Q. Then you had no social relations with them at all?
A. No sir.
C. Q. Did you have children?
A. Yes sir I have.
C. Q. Didn't they want to get acquainted with their cousin?
A. They never bothered one another.
C. Q. Didn't they want to get acquainted?
A. No sir they never did. We never knew where she was the reason we were not around there.
C. Q. Didn't you know she was at Haubstadt?
A. Yes sir when we went there.
C. Q. You went there to visit?
127 A. Not often.
C. Q. When were you there last?
A. Well it has been about ten years since they were together.
C. Q. Who was together?
A. My daughter and Frances.
C. Q. About ten years ago?
A. I don't keep accounts.
C. Q. Where was that?
A. At Ulsemers.
C. Q. Were you there to-?
A. Yes sir.
C. Q. Now where did you live on Division Street?
A. 2202 Division Street.
C. Q. How long did you live there?
A. Well I could not exactly tell.
C. Q. When did you move there?
A. I moved there about two years after my husband died. I bought property there.
C. Q. Fifteen years ago?
A. Yes sir.
C. Q. How long did you live there?
A. Until five years ago.

Redirect Examination of Clara Sielerman.

Redirect examination by Hon. JOHN BROWNLEE:

R. D. Q. How long has it been since you married Mr. Sielerman?
A. The 6th day of November last year.
R. D. Q. You were her aunt by marriage having married her father's brother.
A. Yes sir.
R. D. Q. Frances never at any time visited at your house?
128 A. No sir.
R. D. Q. She never did?
A. No sir.

Recross-examination of Clara Sielerman.

Recross-examination by Judge MAIER:

R. C. Q. Has she ever been there since she was married?
A. Only at the gate.

Re-re-direct Examination of Clara Sielerman.

Re-re-direct examination by Mr. BROWNLEE:

R. R. D. Q. Since this suit was brought?
A. Yes sir a few weeks ago.

129 *Direct Examination of Sister Beatrice.*

Sister BEATRICE, after being duly sworn, testified as follows:

Direct examination by Hon. JOHN BROWNLEE:

Q. State your name?
A. Sister Beatrice.
Q. Where do you live?
A. St. Johns, Warrick County.
Q. Where were you living from 1892 to 1896 and '97?
A. Haubstadt.
Q. Did you know Frances Juchert at that time?
A. Yes sir she lived with Michael Ulsemers.
Q. What was her age?
A. Between 9, 12 and 13.
Q. Was you engaged in school teaching?
A. Yes sir I was.
Q. State whether or not she was one of your pupils?
A. Yes sir.
Q. In the month of February 1896 was she a pupil in your school?
A. Yes sir.
Q. Was she absent any during that month?
A. To my knowledge I don't think she was absent.
Q. What was your rule there, what did you require if any of the pupils were absent?
A. The rule was when a child was absent he had to bring written excuse.
Q. Have you any recollection of her bringing an excuse for being absent that year?
A. No sir.
Q. Or that month of February?
A. No sir.

Cross-examination of Sister Beatrice.

130 Cross-examination by Judge MAIER:

C. Q. You have no distinct recollection of anything that occurred during that time?

A. I remember a great deal.
C. Q. You remember you taught school?
A. Yes sir.
C. Q. You could not remember whether she b-ought an excuse or whether she was absent for a day or two?
A. No sir not at all; I have no recollection.

Redirect Examination of Sister Beatrice.

Redirect examination by Mr. BROWNLEE:

R. D. Q. If an excuse had been given on account of a visit to this county, would you likely remember it?
A. I remember other excuses she brought.
R. D. Q. Did you keep a daily record in your school?
A. Yes sir from the first day as long as I was there.
R. D. Q. What become of that record?
A. I destroyed it before I left.
R. D. Q. When did you leave there?
A. Four years ago.

131 *Direct Examination of William Dean.*

WILLIAM DEAN, after being duly sworn, testified as follows:

Direct examination by Hon. JOHN BROWNLEE:

Q. State your name?
A. William Dean.
Q. You live in this city?
A. Yes sir.
Q. What business are you in?
A. Real estate.
Q. How long have you been in the real-estate business?
A. For about twenty years.
Q. Have you examined lot No. 24 on the corner of Columbia and Reed Street?
A. Yes sir.
Q. What is its value at this time?

Objection to Interrogatory, Overruling, & Exception by Defendant.

To which question counsel for defendant objects.
Mr. BROWNLEE: We desire to prove by this witness what the value of this property was at the time of the judgment and sheriff's sale and to prove its value at the present time, to have the decree set aside; which objection is by the Court overruled; to which ruling of the court the defendant at the time excepted.

Q. What is its present value, the house and lot?
A. Seventeen Hundred ($1700.00) Dollars.
(probable)
Q. Now about what was its present value in 1896 or 1897?

Objection to Interrogatory, Overruling, & Exception by Defendant.

To which question counsel for defendant objects, which objection is by the court overruled; to which ruling of the Court the defendant at the time excepted.

Q. In 1896 what was its value?
A. I think $1250.
Q. $1250.
A. Yes sir.
132 Q. Now the lot next to it, lot #23 what is its value at the present time?

Objection to Interrogatory, Ruling, & Defendant's Exception.

To which question counsel for defendant objects for the reason that she has no possible interest in it; there is no deed to her or claim of any kind.

Mr. BROWNLEE: It comes up under the question of redemption; which objection is by the Court overruled; to which ruling of the court the defendant at the time excepted.

Q. This is the second house from the corner, what is its probable value at this time, the house and lot?
A. $1600.
Q. What was its probable value in 1896?
A. $1150.
Q. Take this lot in Main street, near Columbia what is its probable value?

Objection to Interrogatory, Ruling, & Defendant's Exception.

To which question counsel for defendant objects; which objection is by the Court overruled; to which ruling of the Court the defendant at the time excepted.

Q. What it its probable value?
A. $1300.
Q. What was it in 1896?
A. $1000.
Q. Take lot #6, Block 6, Woodlawn?
A. The same.
Q. What was its value?
A. $1000.
Q. Take lot #21, block 6, what is its value?
A. $475.
Q. What was its value in 1896?
A. $525. It's very much delapidated; the house is pretty much destroyed.

133 *Cross-examination of William Dean.*

Cross-examination by Judge MAIER:

C. Q. You made this estimate under the direction of Mr. Miedreich?

A. He took me there; he didn't suggest anything.
C. Q. You made it at his request?
A. Yes sir.

134 *Direct Examination of Father Ewers.*

Father EWERS, after being duly sworn, testified as follows:

Direct examination by Hon. JOHN BROWNLEE:

Q. You are in charge of the Catholic church at Haubstadt?
A. Yes sir.
Q. How long have you been in charge?
A. Going on twenty five years.
Q. You were in charge in 1892-1896 and 1897?
A. Yes sir.
Q. Did you know a child by the name of Frances Juchert at that time?
A. Yes sir.
Q. Whether you had charge of the church school?
A. I was supposed to be superintendent.
Q. Was Frances an attendant of that school?
A. Yes sir.
Q. At that time?
A. Yes sir.
Q. State whether or not it was the practice in that school for your attention to be called to the absence of the pupils away from school?
A. The rule is if a child is absent from school, the child will excuse himself or herself and give the cause of absence and in case it should be a certain absence so the child could not excuse himself or herself the rule was to be excused by another child or to excuse himself or herself immediately afterwards.
Q. Have you any recollection of her being absent during the month of February, 1896?
A. No I have not.
Q. Was your attention called to any during that month?
A. Never.
135 Q. Did you baptize her?
A. Yes sir.
Q. How old was she?
A. Two days old. She was born on the 21st day of June and baptized on the 23rd day of June.
Q. What year?
A. 1883.

136 *Introduction of Judgment, Objection to Introduction, Ruling Thereon and Exception Thereto.*

Mr. Brownlee of counsel for Plaintiff, offers to introduce in evidence, judgment in Order Book "O", page 108; judgment showing the custody of Frances Juchert was given to Mrs. Michael Ulsemer

of Haubstadt in 1894; to the introduction of which Counsel for defendant objects for the reason that it is not relevent in any sense; which objection was by the court overruled; to which ruling of the court the defendant at the time excepted.

Said judgment was in the words and figures as follows, to-wit:

#7143.

ROSA JUCHERT
vs.
JOHN JUCHERT.

Judgment.

Comes now the plaintiff in person and by Wm. H. Gudgel her attorney and also comes the defendant in person and by Wm. M. Blakely her attorney, and also comes Frances Juchert, the minor child of both plaintiff and defendant and the issues being joined and the case coming on to be heard the court having heard the evidence and being sufficiently advised finds: that said minor Juchert shall be and is hereby placed in charge of Mrs. Michael Ulsomer of Haubstadt, Gibson County until the further *of* order of this court.

That defendant John Juchert the father shall pay weekly for board of said child $1.50 per week and in addition shall properly cloth- her, pay her physician's bill and furnish her school books, etc.

That defendant, the father and plaintiff, the mother, shall have the right to visit said child at Mrs. Michael Ulsomer's and be properly received and treated by said Mrs. Ulsomer and her family, during said visits, said visits to be made at reasonable and proper times.

137 That the decree of divorce heretofore entered in this case between plaintiff and defendant be modified, changed and superseded so far as said child is concerned by this decree that the defendant John Juchert pay the costs herein.

138 *Introduction of Sheriff's Certificates.*

Mr. Brownlee offers to introduce in evidence the sheriff's certificates of purchase by Elsie Lauenstein under this judgment.

Objection, Ruling, Exception.

Mr. MAIER: We offer no objection to lot 24 but we object to the other lots; which objection is by the Court overruled; which ruling of the court the Defendant at the time excepted.

Said certificates were introduced in evidence, which is in the words and figures as follows, to-wit:

Certificate of Purchase from Chas. G. Covert, S. V. C., to Else Lauenstein, Dated May 25th, 1896.

Certificate of Sheriff Sale No. 78.

Be it known, That an order of sale was issued out of the office of the Clerk of the Superior Court of Vanderburgh County and State of Indiana, upon a judgment rendered in said Court, on the 15th day of April A. D. 1896 in an action wherein Francis M. Harned and Else Lauenstein were Plaintiffs and John Juchert et al. were defendants which order of sale was issued from said Clerk's office, on the 22nd day of April A. D. 1896 and directed and delivered to the Sheriff of Vanderburgh County to be executed, and by virtue of said order of sale the said Sheriff was ordered to sell the following described Real Estate, situated in Vanderburgh County State of Indiana, to wit:

Lot Number Twenty-four (24) in Block number eleven (11) Kazar's Division according to the subdivision of said block made by Eichel and Loewenthal.

139 And after having given due notice by advertising in the Evening News and by posting up printed notices in three public places in the Township, and also at the door of the Court House, I did on Monday the 25th day of May A. D. 189-, between the hours of 10 o'clock A. M. and 4 o'clock P. M. of *a of* said day, at the door of the Court House, in the City of Evansville, Vanderburgh County, and State of Indiana, offer for sale at public auction, first the rents and profits of the above described Real Estate for the term of one year, there being no bid offered therefor. I did in like manner offer for sale the rents and profits of said Real Estate for the term of two, three, four, five, six and seven years, there being no bid offered therefor. I did at the same time and place offer for sale the fee simple of said Real Estate without relief from valuation or appraisement laws, and Else Lauenstein became the purchaser of said Real Estate for the sum of Four Hundred ($400.00) Dollars, that being the highest and best bid offered for said Real Estate and in consideration of said sum of Four Hundred (400.00) dollars, to me paid, I hereby execute and deliver to the Said Else Lauenstein this certificate of purchase of said Real Estate this, the 25th day of May A. D. 1896.

CHAS. G. COVERT, *Sheriff V. C.*
By —— ——, *Deputy.*

Assignment of Lauenstein.

For value received, I hereby assign and set over to Sebastian Henrich all and singular the interest of Else Lauenstein in and to the within certificate of purchase, this 9th day of June 1897.

F. LAUENSTEIN,
Att'y in Fact for Else Lauenstein.

140 *Acknowledgment of Execution of Assignment.*

STATE OF INDIANA,
Vanderburgh County, ss:

Personally appeared before the undersigned, a Notary Public in and for said County and State Fred Lauenstein Attorney in fact for Else Lauenstein and acknowledged the execution of the foregoing assignment.

Witness my hand and Notarial Seal this 9th day of June 1897.

J. W. LAUER,
Notary Public.

Assignment, Sebastian Henrich.

For value received I hereby assign and set over to Frederick Lauenstein all my interest in and to the within certificate of purchase this 9th day of June, 1897.

SEBASTIAN HENRICH.

Acknowledgment of Execution of Assignment.

STATE OF INDIANA,
Vanderburgh County, ss:

Personally appeared before the undersigned a Notary Public in and for said county and State, Sebastian Henrich and acknowledged the execution of the foregoing assignment.

Witness my hand and n-tarial seal this 9th day of June 1897.

J. W. LAUER,
Notary Public.

Deed issued June 10, 1897. Three certificates covered in one deed.

141 *Certificate of Purchase from Chas. G. Covert, S. V. C., to Else Lauenstein, Dated May 25th, 1896.*

Certificate of Sheriff Sale No. 78.

Be it known, That an order of sale was issued out of the Office of the Clerk of the Superior Court of Vanderburgh County and State of Indiana, upon a judgment rendered in said court, on the 15th day of April A. D. 189- in an action wherein Frances M. Harned and Else Lauenstein were plaintiffs and John Juchert et al. were Defendants which order of sale was issued from said Clerk's Office, on the 22nd day of April A. D. 1896 and directed and delivered to the Sheriff of Vanderburgh County to be executed and by virtue of said order of sale the said Sheriff was ordered to sell the following described Real Estate, situated in Vanderburgh County, State of Indiana, to-wit:

Lot number twenty-three (23) in block eleven (11) Kazar's Division, according to the subdivision of said block made by Eichel & Loewenthal.

And having given due notice by advertising in the Evening News, and by posting up printed notices in three public places in the Township, and also at the door of the Court House, I did on Monday the 25th day of May A. D. 1896 between the hours of 10 o'clock A. M. and 4 o'clock P. M. of said day, at the door of the Court House, in the City of Evansville, Vanderburgh County, and State of Indiana, offer for sale at public auction, first the rents and profits of
142 the above described Real Estate for the term of one year, there being no bid offered therefor. I did in like manner offer for sale the rents and profits of said Real Estate for the term of two, three, four, five six and seven years, there being no bid offered therefor. I did at the same time and place offer for sale the fee simple of said Real Estate without relief from valuation or appraisement laws, and Else Lauenstein became the purchaser of said Real Estate for the sum of two hundred eighty-eight ($288.00) Dollars, that being the highest and best bid offered for said Real Estate and in consideration of said sum of two hundred and eighty-eight (288.00) Dollars, to me paid, I hereby execute and deliver to the said Else Lauenstein, this certificate of purchase of said Real Estate this 25th day of May A. D. 1896.

CHAS. G. COVERT, *Sheriff V. C.*
By —— ——, *Deputy.*

Assignment, L. Lauenstein.

For value received I hereby assign and set over to Sebastian Henrich all and singular the interest of Else Lauenstein in and to the within certificate of purchase, this 9th day of June, 1897.

F. LAUENSTEIN,
Att'y in Fact for Else Lauenstein.

Acknowledgement of Assignment.

STATE OF INDIANA,
Vanderburgh County, ss:

Personally appeared before the undersigned a Notary Public in and for said County and State, Fred Lauenstein Attorney in fact of Else Lauenstein and acknowledge the execution of the foregoing assignment.
143 Witness my hand and Notarial Seal this 9th day of June 1897.

J. W. LAUER,
Notary Public.

Assignment, Sebastian Henrich.

For value received I hereby assign and set over to Frederick Lauenstein all my interest in and to the within certificate of purchase, this 9th day of June 1897.

SEBASTIAN HENRICH.

Acknowledgment of the Execution of Assignment.

STATE OF INDIANA,
Vanderburgh County, ss:

Personally appeared before the undersigned Notary Public in and for said county and State Sebastian Henrich and acknowledged the execution of the foregoing assignment.

Witness my hand and notarial seal this 9th day of June 1897.

J. W. LAUER,
Notary Public.

Deed issued June 10th 1897. Three certificates covered in one deed.

144 *Certificate of Purchase from Chas. G. Covert, S. V. C., — Else Lauenstein, Dated May 25th, 1906.*

Certificate of Sheriff Sale No. 78.

Be it known, That an order of sale was issued out of the Office of the Clerk of the Superior Court of Vanderburgh County and State of Indiana, upon a judgment rendered in said court on the 15th day of April A. D. 1896, in an action wherein Francis M. Harned and Else Lauenstein were plaintiffs and John Juchert, et al, were Defendants which order of sale was issued from said Clerk's Office, on the 22nd day of April A. D. 1896 and directed and delivered to the sheriff of Vanderburgh County to be executed, and by virtue of said order of sale the said sheriff of Vanderburgh County was ordered to sell the following decribed Real Estate, situated in Vanderburgh County, State of Indiana, to-wit:

Lot number twenty-one (21) in block number six (6) in Kumler's Addition to the City of Evansville.

Also lots number five (5) and six (6) in block number seventeen (17) Woodlawn, an Addition to the City of Evansville, Indiana.

And after having given due notice by advertising in the Evening News and by posting up printed notices in three public places in the township, and also at the door of the Court House, I did on Monday the 25th day of May A. D. 1896 between the hours of 10 o'clock A. M. and 4 o'clock P. M. of said day at the door of the Court House, in the city of Evansville, Vanderburgh County and State of Indiana, offer for sale at public auction, first the rents and profits of the above described Real Estate for the term of one year, there

being no bid offered therefor. I did in like manner offer
145 for sale the rents and profits of said Real Estate for the term of two, three, four, five, six and seven years, there being no bid offered therefor. I did at the same time and place offer for sale the fee simple of said Real Estate without relief from valuation or appraisement laws, and Else Lauenstein became the purchaser of said Real Estate for the sum of Thirteen Hundred ($1300.00) Dollars, that being the highest and best bid offere- for said real Estate, and in consideration of said sum of Thirteen Hundred ($1300.) Dollars, to me paid, I hereby execute and deliver to the said Else Lauenstein this certificate of purchase of said Real Estate this, the 25th day of May A. D. 1896.

CHAS. G. COVERT, *Sheriff V. C.*
By —— ——, *Deputy.*

Assignment, F. Lauenstein.

For value received I hereby assign and set over to Sebastian Henrich, all and singular the interest of Else Lauenstein in and to the within certificate of purchase, this 9th day of June 1897.

F. LAUENSTEIN,
Attorney in Fact for Else Lauenstein.

Acknowledgment of the Execution of Assignment.

STATE OF INDIANA,
Vanderburgh County, ss:

Personally appeared before the undersigned a Notary Public in and for said County and State, Fred Lauenstein, Att'y, in fact for Else Lauenstein and acknowledged the execution of the foregoing assignment.

Witness my hand and Notarial Seal this 9th day of June, 1897.

J. W. LAUER,
Notary Public.

146 *Assignment, Sabastian Henrich.*

For value received, I hereby assign and set over to Frederick Lauenstein all my interest in and to the within Certificate of purchase, this 9th day of June 1897.

SEBASTIAN HENRICH.

Acknowledgement of Execution of Assignment.

STATE OF INDIANA,
Vanderburgh County, ss:

Personally appeared before the undersigned, a Notary Public, in and for said County and State, Sebastain Henrich and acknowledged the Execution of the foregoing assignment.

Witness my hand and Notarial Seal this 9th day of June, 1897.
J. W. LAUER,
Notary Public.

Deed issued June 10, 1897. Three certificates included in one deed.

147 *Direct Examination of Peter Maier.*

PETER MAIER, after being duly sworn, testified as follows:

Q. You- name is Peter Maier?
—. Yes sir.
Q. That is the summons for John Juchert in the case of Elsa Lauenstein against him and others?
A. Yes sir.
Q. You had that summons issued?
A. Yes sir.
Q. And directed it to the sheriff of Gibson County?
A. I suppose so. I made Michael Ulsemer a party dedefendant.
Q. You had a summons for her mother?
A. I think I was informed that she lived in St. Louis. She was a woman you could not tell where she was from — day to the next.
Q. You had been Juchert's attorney before that?
A. Yes sir.
Q. You knew he was living at Haubstadt?
A. I knew he went there and lived there a while. I didn't know that was his home.
Q. A short time before this case was tried, the February following this time, you ordered summons issued for Frances Juchert?
A. Yes sir I ordered the summons.
Q. You had it ordered to the sheriff of this County?
A. Yes sir.
Q. To this county?
A. Yes sir I supposed the girl lived here, I didn't know.
Q. You knew her father was not in the county at that time?
A. I thought her father lived here.
148 Q. Why did you have the summons issued to the sheriff of Gibson County?
A. At that time he lived there.
Q. Did you take the trouble to look up the record to see whose custody she was in?
A. I didn't know there was any controversy.
Q. Did you ask any one where she lived?
A. I don't remember as it has been ten years or more I was very anxious to get a service on her and probably I did.
Q. You made no inquiry to ascertain where she lived?
A. I don't remember.
Q. You personally took that summons that was issued to Mr. Scott?
A. Yes sir I was solicitous and wanted to have him serve it.

Q. You directed him where to go to serve it?

A. I think I told him where she might be found. I made some suggestions probably. I think something was said about Juchert's living on Division.

Q. You took precaution to ascertain Juchert was in Haubstadt and had the summons issued to the sheriff in Gibson County?

A. Yes sir.

Q. Do you have any recollection of making inquiries where this child was?

A. No sir I have no recollection.

Q. You knew she was a small child at that time?

A. I don't know anything except what I saw in the deed; her mother was left out because they were divorced and by chance I happened to get Mr Henrich to make an abstract and then I discovered she was a party to #24 and also her daughter
149 and then I amended my complaint and put those parties in; made both parties and wanted both served.

Q. Didn't you know where she lived or didn't you ascertain where she lived and when you had the summons issued?

A. I cannot remember how. I don't remember only I heard Mrs. Juchert lived in St. Louis but it's impossible for me to tell that. I have no recollection where the girl lived. We always left that to the sheriff but in this case I was solicitous to get good service and I went to the sheriff myself.

Q. Did you tell him where to serve it?

A. I don't know as I directed him. I told him to find out where the girl was; he promised he would make proper service and when he returned it I took it for granted he had done so. I might state that Mr. Herman and I were his (John Juchert's) attorneys and he was being sued by different parties and we were trying to sell his property and pay his creditors, but they came so many and fast that we abandoned all hopes of making anything out of the property; we saw he was insolvent.

Q. He got that way by endorsements and security?

A. Perhaps so, Mr. Ulsemer came to my office at different times and told me about the claim he wanted to make against him. He had a mortgage, probably I wrote it myself; that was subsequent to those Lauenstein mortgages.

Q. And subsequent to this deed?

A. Mr. Ulsemer was here and I tried my best to persuade him to buy the property to secure himself and Mr. Lauenstein; He (Frederick Lauenstein) bought it in for the debt or I did rather and he gave Mr. Ulsemer a year's time if he could raise the money
150 to turn this over to him.

Q. Is that the mortgage you hold in your hand?

A. This is a copy I guess.

Q. That mortgage is subsequent to 1892?

A. Yes sir it was signed in my office.

Q. What is the date?

A. March 7, 1895. I think that mortgage was given under my instructions to secure him and when the property was sold we bought

it in in separate parcels; Mr. Lauenstein was ready at any time to turn the property over to any one who wanted it so he could get his debt.

Q. Is he ready to do that now?

A. He don't own it. I see a number of cross complainants here that were filed in this same suit, I will say the work we did for Mr. Juchert has never been paid for.

151 Mr. BROWNLEE: We wish to consider in evidence the sheriff's deed of the property to Frederick Lauenstein; which deed was introduced in evidence and is in the words and figures as follows, towit:

Sheriff's Deed.

Be it known, That by virtue of an Order of Sale issued out of the office of the Clerk of the Superior Court of Vanderburgh County, Indiana, upon a Judgment or Decree of said court, and directed and delivered to the Sheriff of Vanderburgh County, to be executed, which Judgment was rendered in said court on the 15th day of April, 1896 in an action Wherein Francis Harned and Else Lauenstein were plaintiffs and John Juchert et al., which order of sale was issued from said Clerk's office on the 22nd day of April A. D. 1896 in favor of Francis Harned and Else Lauenstein and against the property of the said John Juchert et al., and by virtue of said Order of Sale the said sheriff was ordered to sell the following Real Estate, situated in the County of Vanderburgh and the State of Indiana, viz.:

Lot number Twenty-one (21) in block Number Six (6) Kumler's Addition to the City of Evansville, Indiana.

Lots Numbers five (5) and six (6) in block Number Seventeen (17)) in Woodlawn, an Addition to the City of Evansville, Indiana.

Lot number twenty-four (24) in block Number Eleven (11) Kazar's Division according to the Subdivision of said block made by Eichel & Loewenthal.

Lot Number twenty-three (23) in Block number Eleven (11) Kazar's Division, according to the subdivision of said block by Eichel & Loewenthal.

152 And by virtue of said Order of Sale said Sheriff by advertisement, gave due notice that on Monday May 25th 1896 between 10 o'clock A. M. and 4 o'clock of the same day at the door of the court house in Evansville, in said County, he would for the satisfaction of said Order of Sale offer first the Rents and Profits of said Real Estate, for seven years for sale at Public Auction, and that if said Rents and profits would not sell for a sum sufficient to satisfy said Order of Sale and costs, then he would, at the same time and place, offer the Fee simple of said Real Estate for sale at Public Auction to the highest bidders, without regard to valuation or appraisement laws.

And in pursuance of said advertisement and at the same time and place therein specified as aforesaid, said Sheriff did offer for sale, first the Rents and Profits of said Real Estate for the term of seven

years and for which said rents and profits there was no bid offered, and thereupon, at the same time and place, said Sheriff offered for sale as aforesaid the Fee Simple of said Real Estate and Else Lauenstein became the purchased of the real estate at the price of Nineteen Hundred and eighty-eight Dollars ($1988.) being the highest price offered.

For value received Else Lauenstein transferred and assigned the certificates of purchase in this sale to Sebastain Henrich.

For value received Sebastian Henrich transferred and assigned the certificates of purchase in this sale to Frederick Lauenstein.

Now by virtue of the authority aforesaid and in consideration of the premises and of the sum of Nineteen Hundred and eighty-eight Dollars ($1988.) to me paid, I, Chas. G. Covert, Sheriff of Vanderburgh County, do hereby convey and confirm to the said Frederick Lauenstein and his heirs and assigns, the said piece of ground
153 above particularly described, with the appurtenances thereto belonging.

In testimony whereof, The said Chas. G. Covert as Sheriff, as aforesaid, does hereunto subscribe his name and affix his seal the 10th day of June, A. D. 1897.

[SEAL.]

CHAS. G. COVERT. [SEAL.]
Shetriff of Venderburgh County.

Acknowledgment of Execution of Sheriff's Deed.

STATE OF INDIANA,
Vanderburgh County, ss:

This day, Chas. G. Covert, Sheriff of Vanderburgh County came before me, Chas. Sihler, Clerk of the Vanderburgh Circuit Court of said county, and acknowledged the execution of the within and foregoing deed.

Witness my hand and Official Seal at Evansville, in said County, the 10th day of June A. D. 1897.

[SEAL.]

CHAS. SIHLER, *Clerk.*

Record- June 14, 1897.
Edward H. Rasch, R. V. C.
Deed Records # 69, page 318.

154 *Death of Frederick Lauenstein Admitted.*

Introduction of Will of Frederick Lauenstein.

It is admitted that Frederick Lauenstein is dead.

Mr. Brownlee, of counsel for plaintiff, offers and introduces
155 in evidence, the will of Frederick Lauenstein to Constanze Lauenstein, which is in the words and figures as follows, to-wit:

The following will having been duly probated at the June Term, 1904, of the Vanderburgh Circuit Court and ordered entered in the proper record of wills of said county the same is now here so done.

Will of Frederick Lauenstein.

I, Frederick Lauenstein of the County of Vanderburgh and State of Indiana, being of sound mind and memory, do hereby make, declare and publish this, my last will and testament, to-wit:

First. I hereby devise unto my dear wife Constanze Lauenstein, all of my real estate in fee simple.

Second. I hereby devise and bequest unto my said dear wife, Constanze, all of the household furniture, books, pictures and other articles contained in my residence, for her separate use forever.

Third. I hereby devise and bequeath unto my said dear wife Constanze, all the rest and residue of my estate of whatever kind and nature, and wherever situate, to have and to enjoy the same for and during her natural life and so long as she remains unmarried, and should she again marry, then she shall take but one-third of said remainder, and the other two-thirds of said remainder shall then go to and vest in my children.

Fifth. I hereby appoint as executrix of this, my last will and testament, my said dear wife Constanze Lauenstein and it is my desire and I hereby direct, that no bond be required of her, in the execution of this, my last will and testament.

156 In witness whereof I hereunto set my hand this 26th day of May, 1899.

(Signed) F. LAUENSTEIN.

Attest to Will.

The foregoing last will of Frederick Lauenstein was signed by him in our presence and by us in her presence and the- in the presence of each other this 26th day of May, 1899.

SEBASTIAN HENRICH.
JOHN M. GREB.

Affidavit of Attesting Witness.

STATE OF INDIANA,
Vanderburgh County, ss:

Before me, the undersigned, Clerk of the Vanderburgh Circuit Court, personally came Sebastian Henrich — of the subscribing witness- to the foregoing will and testament of Frederick Lauenstein, late of said county, deceased, and being duly sworn on oath says that he was present at the execution of said last will; that the same was duly executed; that at the time of the execution thereof, said testator was of full age to devise his property, of sound mind, and memory and not under any coercion or restraint; that said testator re-

quested him to sign said will as witness thereto, where he accordingly did in the presence of said testator and in the presence of the other subscribing witness thereto.

SEBASTIAN HENRICH.

Subscribed and sworn to before me this 18th day of July, 1904.

CHARLES SIHLER, *Clerk.*

Recorded in Record of Wills, "I" p. 90 & 91. Vanderburgh Circuit Court.

157 Be it remembered, that on the 22nd judicial day of the June term, 1907, of the Superior Court, viz:—on Thursday the 27th day of June, 1907, an order of said Court was made and entered of record and is in the words and figures following, to-wit:

No. 13635.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

Judgment.

Comes now the parties by their respective counsel, and the issues being joined, this cause comes on to be heard and is submitted to the Court for trial without the intervention of the jury.

And the Court having heard the evidence and being fully advised in the premises finds for the defendant on the plaintiff's complaint.

It is therefore considered by the court that the plaintiff take nothing by her complaint and that defendant recover her costs herein.

Be it remembered that on the twenty-fourth judicial day of the June Term, 1907, of said court towit: on Saturday June the 29th, 1907, an order of said Court was made and entered of record
158 and is in the words and figures following towit:

No. 13635.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

Come the parties and the plaintiff now files her motion for a new trial herein, which motion is submitted to the Court and overruled, and to which ruling the plaintiff excepts; and ninety days is given the plaintiff in which to file a bill of exceptions.

And which said motion for a new trial is in the words and figures as follows:

In the Superior Court of Vanderburgh County, June Term, 1907.

13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

The plaintiff in the above entitled cause moves the Court for a new trial herein, for the following reasons to-wit:

1. The decision of the Court is not -ustained by sufficient •—.
2. The decision of the court is contrary to the evidence.
3. That the decision of the Court is contrary to law.
4. The decision of the Court is contrary to the law and the evidence.

Wherefore the plaintiff prays the Court for a new trial of said cause.

WM. P. MIEDREICH,
JOHN BROWNLEE,
Attys. for Plaintiff.

159 In the Superior Court of Vanderburgh County, June Term, 1907.

13635.

FRANCES A. MIEDREICH
VS.
CONSTANZE LAUENSTEIN.

Reporter's Certificate.

I, Nell F. Coomes, as the official and shorthand reporter, of the Superior Court of Vanderburgh County, Indiana, and the official court Reporter in the trial of the above cause, hereby testify that the above and foregoing is a full, true and complete copy and transcript of all evidence given and delivered in the trial of said cause, including both the questions and answers, and all the rulings of the Court in respect to the admission and rejection of evidence and the exceptions thereto.

In witness whereof; I have hereunto set my hand this 24th day of September 1907.

NELL F. COOMES,
Reporter of the Superior Court of Vanderburgh County, Indiana.

160 In the Superior Court of Vanderburgh County, June Term, 1907.

13635.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

Presentation of Bill of Exceptions.

And now on the 19th day of September, 1907, and within the time limit of ninety days fixed by the Court as the time within which the plaintiff be required to file their Bill of Exceptions herein, the plaintiff now here presents to the Court, this, her Bill of Exceptions and prays that the same be signed, sealed and made a part of the record in this cause. And now said Bill of Exceptions is by the Court taken under advisement.

ALEXANDER GELCHRIST,
Judge of the Superior Court of Vanderburgh County, Indiana.

161 In the Superior Court of Vanderburgh County, June Term, 1907.

No. 13635.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

Certificate of Judge.

Be it further remembered; That this Bill of Exceptions, having heretofore been taken under consideration by the court, on the date of presentation; and now the Court having examined said Bill of Exceptions and bein- duly advised in the premises, finds that the same is true and correct and the same is now here signed, sealed and made a part of the record, in this cause for the purpose of an appeal therein, this 9th day of October, 1907.

ALEXANDER GILCHRIST,
Judge of the Superior Court of Vanderburgh County, Indiana.

Upon examination I find the Transcript substantially correct.
P. MAIER.

Superior Court. Filed Oct. 9, 1907. Guild C. Foster, Clerk.

162 In the Superior Court of Vanderburgh County.

No. 13635.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

General Precipe.

To Guild Foster, Clerk of the Superior Court of Vanderburgh County:

You are hereby requested to prepare a compete transcript of the record of the proceedings in the above entitled cause and to include therein all papers and pleadings filed and on file, the order book entries, of all orders and rulings, and the final judgment in the above cause, also all evidence of whatsoever kind and description, and certify to the same, to be used on appeal to the Supreme Court in the State of Indiana.

WILLIAM P. MIEDREICH,
JOHN BROWNLEE,
Attorneys for Plaintiff.

162½ [Endorsed:] No. 13635. Superior Court. Frances A. Meidreich vs. Constanze Lauenstein. General Precipe. Superior Court. Filed July 1, 1907. Guild C. Foster, Clerk. Wm. P. Miedreich, John Brownlee, Appellant's Attys.

163 In the Superior Court of Vanderburgh County, September Term, 1907.

No. 13635.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

STATE OF INDIANA,
Vanderburgh County, ss:

Clerk's Certificate.

I, Guild C. Foster, Clerk of the Superior Court of Vanderburgh County, within and for said county, do hereby certify that the above and foregoing transcript contains full, true, correct and complete copies or the originals of all the papers and entries in said cause required by the above and foregoing præcipe.

Witness my hand and seal of said court at Evansville, this 9th day of October, 1907.

[SEAL.]

GUILD C. FOSTER,
Clerk of Superior Court.

Superior Court. Filed Oct. 9, 1907. Guild C. Foster, Clerk.

[Endorsed:] Filed Oct. 22, 1907. Edward V. Fitzpatrick, Clerk.

164 STATE OF INDIANA:

In the Supreme Court.

FRANCES MIEDREICH, Appellant,
v.
CONSTANZE LAUENSTEIN, Appellee.

Assignment of Errors.

Filed Oct. 22, 1907. Edward V. Fitzpatrick, Clerk.

Assignment of Errors.

The appellant says that there is manifest error in the judgment and proceedings in this:—

1st. The Court erred in sustaining Appellee's Demurrer to the Fourth Paragraph of the Amended Complaint of the Appellant.

2nd. The Court erred in over-ruling Appellant's motion for a New Trial.

Wherefore the Appellant prays that the Judgment be reversed.

WILLIAM P. MIEDREICH,
JOHN BROWNLEE,
Attorneys for Appellant.

Fild Oct. 22, 1907. Edward V. Fitzpatrick, Clerk.

165 STATE OF INDIANA,
Vanderburgh County, ss:

In the Superior Court, Vanderburgh County, September Term, 1907.

13635.

FRANCES A. MIEDREICH
v.
CONSTANZE LAUENSTEIN.

To Guild C. Foster, Clerk of the Superior Court of Vanderburgh County:

You are hereby notified that the plointiff in the above entitled cause will appeal to the Supreme Court of the State of Indiana from the Judgment rendered against her in said cause in the Superior Court of Vanderburgh County, on the twenty-seventh day of June, 1907.

WILLIAM P. MIEDREICH,
JOHN BROWNLEE,
Attorneys for Plaintiff.

Filed Oct. 22, 1907. Edward V. Fitzpatrick, Clerk.

I acknowledge service of the within notice and the receipt of a copy thereof this 10th day of October, 1907.

GUILD C. FOSTER,
Clerk of the Superior Court of Vanderburgh County.

166 STATE OF INDIANA,
Vanderburgh County, ss:

In the Superior Court, Vanderburgh County, September Term, 1907.

13635.

FRANCES A. MIEDREICH
v.
CONSTANZE LAUENSTEIN.

Notice of Appeal to the Appellee.

To Constanze Lauenstein, Defendant in the above entitled cause:

You are hereby notified that the Plaintiff will appeal to the Supreme Court of the State of Indiana from the Judgment rendered against her and in your favor in the above entitled cause, in the Superior Court of Vanderburgh County on the twenty-seventh day of June, 1907.

WILLIAM P. MIEDREICH,
JOHN BROWNLEE,
Attorneys for Plaintiff.

Filed Oct. 22, 1907. Edward V. Fitzpatrick, Clerk.

Acknowledgment of Service.

EVANSVILLE, IND., *October 5th*, 1907.

On behalf of the Appellee, Constanze Lauenstein, I hereby acknowledge service of the foregoing notice at the time and place above written.

PETER MAIER,
Attorney for Constanze Lauenstein.

167 And afterwards, to-wit: on the 21st day of November, 1907, the same being the 154th Judicial Day of the May Term, 1907, of said Supreme Court, the following further pleas and proceedings were had in said cause to-wit:

Come now the parties by counsel, and this cause is submitted to the court for judgment and decree as provided by the act of the General Assembly of the State of Indiana, approved April 13, 1885, and the rules of said Supreme Court adopted in relation thereto.

And afterwards, to-wit: on the 27th day of December, 1907, the following further pleas and proceedings were had herein:

Comes now the Appellee, by counsel, and files her written appearance, in the words and figures following: (Here insert.)

And afterwards, to-wit: on the 15th day of January, 1908, the following further pleas and proceedings were had herein:
Comes now the Appellant by counsel and files her brief in the words and figures following: (Here insert.)

168 And afterwards, to-wit: on the 4th day of February, 1908, the following further pleas and proceedings were had herein:
Comes now the Appellee by counsel, and files her petition for additional time in the words and figures following: (Here insert.)
And on the same day the following further pleas and proceedings were had in said cause:
The Court being sufficiently advised in the premises, grants Appellet thirty (30) days' additional time.

And afterwards, to-wit: on the 10th day of March, 1908, the following further pleas and proceedings were had herein:
Comes now the Appellee by counsel and files her brief in the words and figures following: (Here insert.)

And afterwards, to-wit: on the 25th day of March, 1908, the following pleas and proceedings were had herein:
Comes now the Appellant, by counsel, and files her reply briefs in the words and figures following: (Here insert.)
And on the same day, the following further pleas and proceedings were had herein:
Comes now the Appellant by counsel and files her petition for leave to file amended statement of record and evidence, in the words and figures following: (Here insert.)

169 And afterwards, to-wit: on the 31st day of March, 1908, the following further pleas and proceedings were had herein:
The Court being sufficiently advised in the premises, grants Appellant's petition heretofore filed herein for leave to file an amended statement of the record and evidence.

And afterwards, to-wit: on the 25th day of April, 1908, the following further pleas and proceedings were had herein:
Comes now the Appellant by counsel, and files her amended statement of record and evidence, in the words and figures following: (Rere insert.)

170 And afterwards, to-wit: on the 15th day of January, 1909, the same being the 47th Judicial Day of the November Term, 1908, of said Supreme Court, the following further pleas and proceedings were had in said cause to-wit:
Come now the parties by counsel and the Court being sufficiently advised in the premises, affirms the judgment of the court below with the following opinion pronounced by Myers, J.

171 *Opinion of the Supreme Court.*

No. 21137.

FRANCIS A. MIEDREICH.
vs.
CONSTANZE LAUENSTEIN.

From the Vanderburgh Superior Court.

MYERS, *J.*:

This was an action by Appellant against Appellee, in the Vanderburgh Superior Court to vacate a judgment of foreclosure of a mortgage, and sale of her property, and for an accounting for rents, and to be permitted to redeem, on the ground that she had no notice of the original action, and that her property had been taken without any notice, or opportunity to be heard. Both parties have treated this action as one arising under the provisions of Article 14 of the Federal Constitution and as presenting the question of due process of law, and rights guaranteed by the State and Federal Constitutions.

A demurrer by Appellee, was sustained to the fourth paragraph of complaint, for want of facts to constitute a cause of action, an exception was reserved, and that ruling is assigned as error here.

The fourth paragraph of complaint, so far as the grounds of relief thereby sought are concerned, is predicated on the alleged fact that when the original foreclosure proceedings were had under which sale of her property was made, Appellant was twelve years of age, and not a resident of Vanderburgh County, where the actions were brought, but a resident of Gibson County, and had been for many years; that she was not summoned to appear and defend her interests in said action; that she had no knowledge of the pendency of the action, did not waive service of process, nor did any one for her, or in her behalf, or by her consent,
172 enter any appearance for her; that she was not amenable to the jurisdiction of the sheriff of Vanderburgh County, but notwithstanding the fact that she was not served with process, the sheriff of Vanderburgh County made a false return of a pretended summons, and the Court was wrongfully imposed upon by such false return, and being thus falsely advised, at the instance of attorneys for the plaintiff in the cause, appointed a guardian ad litem for her, who filed an answer for her; that a decree was thereupon entered, her property sold, bid in by the plaintiff in the action, and showing direct privity between the original plaintiff, and the Appellee here, and timely application for relief. It is settled in this jurisdiction, that such an action may be maintained as a direct attack upon the judgment, certainly so if it can be said to amount to a charge of fraud in procuring notice, or obtaining the judgment. Frankel vs. Garrard, 160 Ind. 209; State

vs. Hindman 159 Ind. 586; Cotterell vs. Koon, 151 Ind. 182; Asbury vs. Frisz, 148 Ind. 513; Kirby vs. Kirby, 142 Ind. 449; Thompson vs. McCorkle, 136 Ind. 484; Dobbins vs. McNamara, 113 Ind. 54.

The paragraph is silent as to what the record shows on the question of notice to Appellant, which in case the complaint could not be said to aver fraud in procuring the process or judgment, would present a different question, for in such case there must be an averment as to what the record shows on the question of notice. Chicago etc. Co. vs. Grantham, 165 Ind. 279; Layman vs. Hughes, 152 Ind. 484; Runner, Assignee vs. Scott, 150 Ind. 441; Bailey vs. Rinker, 146 Ind. 129.

The allegations do not present a question of fraudulent conduct on the part of the Appellee's predecessor in title or of her attorneys in procuring a false return, or participation of a fraud upon the Court, which is an acknowledged ground of interference
173 of a court of equity. Frankel vs. Garrard, 160 Ind. 209; Brown vs. Eaton, 98 Ind. 591; Cavanaugh vs. Smith 84 Ind. 380; Graham vs. Loh, 32 App. 183.

The question is then presented whether the allegations that Appellant was a minor; was not a resident of Vanderburgh County; that no summons was served on her; that she had no knowledge of the proceedings; did not waive service, nor did any one for her or in her behalf or with her consent, enter appearance for her; that she was not amenable to the jurisdiction of the sheriff of Vanderburgh County, that notwithstanding that she was not served with process, the sheriff of Vanderburgh County made a false return of a pretended summons, and the Court was wrongfully imposed upon by such false return and being thus falsely advised at the instance of plaintiff's attorneys appointed a guardian ad litem for her constitute a charge of fraud. The return was regular upon its face. The Court had jurisdiction of the subject matter, and apparently jurisdiction of the person of Appellant: the false return was not procured by fraud, collusion or imposition of the plaintiff or his attorneys: it is not alleged that either knew of the facts alleged as to there not having been service on Appellant: the allegations practically amount to this: if without any fraud, or any act on the part of a party to an action or his attorney, a re*u*rn is made by a sheriff showing service, regular on its face, without knowledge of the party that there was in fact no service, and no act is done or thing said to mislead the sheriff, *is it* an imposition of fraud upon the Court to present such summons and return, and obtain a judgment upon it, and it is a charge of fraud or imposition upon the Court to allege that the Court was wrongfully imposed upon by such false return, and was thus falsely advised. The whole allegations must be taken together, and the scope and theory of the paragraph, as we construe it, is that the Court was misled by a false return of the sheriff. The Court had a right to rely, and act upon the
174 return: it imports verity to the Court: the sheriff assumes the responsibility, in taking the office, of seeing to it that he does

make the right service. Nichols vs. Nichols, 96 Ind. 433; State vs. Leach, 10 Ind. 208; State vs. Lines, 4 Ind. 351.

If this were not true, no litigant could ever know when his rights were adjudicated and set at rest, and to the end that the party may be made whole, an action for a false return will lie. Splahn vs. Gillespie, 48 Ind. 397; Rowell vs. Klein, 44 Ind. 290.

If it be said that the amount of bond a sheriff is required to give might not cover the damage in any or every case, it is sufficient to say that that is a legislative matter, and not a judicial one. Whilst Courts should be, and are, tenacious of the rights of minors, yet they must proceed within recognized rules of equity, as well as of law. We do not think that the Court erred in sustaining a demurrer to the fourth paragraph.

The cause went to trial on two other paragraphs of complaint explicitly charging fraud on the part of plaintiffs and their attorneys in the original cause in procuring service to be made upon some person whose name and identity is to Appellant unknown, by fraudulently representing to the sheriff that such person was the Appellant, and thus procured a false return to be made, by which the Court was imposed upon and the decree rendered.

The only error assigned is upon the overruling of the motion for a new trial, in which the causes, properly assigned, are that the decision is not sustained by sufficient evidence and is contrary to law. The sole question presented upon that motion, as to whether Appellant had been served with summons in the original cause: the evidence was conflicting, and the Court found against Appellant on the evidence on the only question in the cause, and there was legal evidence supporting the finding.

175 We cannot disturb the decision upon the weight of the evidence in this character of action any more than in any other kind of adversary action. Murrer vs. The Security Co., 131 Ind. 35 and cases cited.

The judgment is affirmed.

175½ And afterwards, to-wit: on the 13th day of March, 1909, the following further pleas and proceedings were had herein:

Comes now the Appellant by counsel and files a petition for rehearing together with briefs (8) thereon in the words and figures following: (Here Insert).

176 And afterwards, to-wit: on the 8th day of April, 1909, the same being the 118th Judicial Day of the November Term, 1908, of said Supreme Court, the following further pleas and proceedings were had in said cause to-wit:

Come now the parties by counsel and the Court being sufficiently advised in the premises, now overrules the petition for a rehearing heretofore filed herein by Appellant, with an opinion pronounced by Myers, J., in the words and figures following:

177 *Opinion on Petition for Rehearing.*

On Petition for Rehearing.

MYERS, *J.*:

Counsel urge upon the Petition for rehearing, that we were in error in holding that the fourth paragraph of complaint is not based upon fraud upon the part of Appellee's remote grantors in procuring a false return.

This urgency is based upon the facts that, after recital of the historical events in connection with the foreclosure suit, and the fact that there was not service in fact, and a false return, a decree, foreclosure, and sale, that an agent and attorney in fact of Appellee's remote grantor, "had personal knowledge of the facts herein alleged," and that this allegation sufficiently charges fraud, in the fact of such general allegation of knowledge: it is not averred that Appellee's grantor or her attorneys participated in any act to procure a false return, nor any other allegation to couple specific knowledge with the specific fact of a false return.

If, in order that the paragraph should be held good, it is necessary to hold that the language quoted imputes knowledge such as to charge fraud, there is no reversible error in sustaining the demurrer, for the first and fifth paragraphs are grounded upon knowledge of the false return, and conspiracy of Appellee's remote grantor, and imposition on the officer, and a false return produced with the identical allegation as the fourth as to knowledge; and required no
178 other or different evidence to sustain them than would have been required under the fourth, unless it can be said that knowledge that the return was false, is different from active participation in procuring a false return; but we apprehend that if a party knows that a return is false, and procures a judgment upon it, he is legally as culpable as if he were an active participant. The material thing is knowledge of the false return, and it is immaterial whether a party knows a return is false, either as a matter of independent knowledge, or by participating in procuring it, for in either case the judgment should be set aside, and we should not hesitate to do so, if such a case were made.

We have again read the evidence in this case, and there is no evidence of knowledge on the part of appellee's remote grantors or her attorneys, of the fact that the return was false, and while the facts alleged in the complaint show an apparent hardship, it is not a different hardship from that which arises in every case where property is bought at enforced sale for a less sum than its value; the evidence shows that Appellant's uncle with whom she lived and who had a large lien against the same property, would not, or could not, give the amount of the mortgage debt for it, and take the certificate of purchase, though urged for a year by appellee's grantor, to do so, which fact is a strong circumstance against the theory of an attempt to obtain appellant's property by means of a false return.

Upon the question of the sufficiency of the evidence to support the decision, we think it is fully supported.

Petition for rehearing denied.

179 And afterwards, to-wit: on the 17th day of October, 1910, the same being the 127th Judicial Day of the May Term, 1910, of said Supreme Court the following further pleas and proceedings were had herein:

Comes now the Appellant by counsel, and files in the office of the Clerk of the Supreme Court of Indiana, her petition for the allowance of a writ of error to the Supreme Court of the United States, and the allowance thereof by Leander J. Monks, Chief Justice of the said Supreme Court for the May Term, 1910, of said Court, said petition being hereto next below attached, and being as follows:

180 *Petition for Writ of Error.*

In the Supreme Court of the State of Indiana.

#21137.

FRANCES A. MIEDREICH, Appellant,
vs.
CONSTANZE LAUENSTEIN, Appellee.

Petition for Writ of Error.

Comes now the above named Frances A. Miedreich, Appellant and says that on the 15th day of January, A. D. 1909, judgment in this case was entered by this Court against said Frances A. Miedreich, Appellant, and thereafter a petition for re-hearing was filed, presented and considered, and on the 8th day of April, A. D. 1909 denied by this court, whereupon said judgment became final, the same being an affirmance by this Court of a judgment rendered against said Appellant by the Superior Court of Vanderburgh County, in the State of Indiana on the 27th day of June, 1907; and that said Frances A. Miedreich was and is aggrieved in that in said judgment and the proceedings had prior thereto in this case certain errors were committed to her prejudice; that in the language of this Court in the opinion in which the aforesaid judgment was rendered, "Both parties have treated this action as one arising under the provisions of Article Fourteen of the Federal Constitution, as presenting the question of due process of law and rights guaranteed by the State and Federal Constitution-;" that this question arose in an ac-

181 tion by Appellant against Appellee to redeem certain real estate from a sale under decree of court rendered in foreclosure proceedings, in which said Appellant claims that she was not served with process and had no notice or knowledge of the pendency of the proceedings in foreclosure; that she did not waive service of process nor did any one for her or in her behalf or by her consent waive service of process or enter appearance for her; that she had no op-

portunity of being heard in defense of her rights and that therefore said proceedings were without due process of law and that the claim of the Appellee to said real estate is invalid and that to allow the same would be to deprive the Appellant of her property and rights without due process of law and contrary to the said Article Fourteen of the Constitution of the United States; and that the decision of this court has the effect of depriving her of such rights without due process of law and is contrary to said Article of said Constitution, all of which will more fully appear in detail from the Assignment of Errors filed herein.

Wherefore, said Frances A. Miedreich prays that a Writ of Error may be given her to the Supreme Court of the State of Indiana for the correcting of the errors complained of and that a duly authenticated transcript of the record, proceedings and papers herein may be sent to the United States Supreme Court.

WILLIAM P. MIEDREICH,
JOHN BROWNLEE,
GEORGE K. DENTON,
(*Attorneys for Appellant*) *Evansville, Indiana.*

181½ [Endorsed:] #21137. In the Supreme Court of the State of Indiana. Frances A. Miedreich, Appellant, vs. Constanze Lauenstein, Appellee. Petition for Writ of Error. Filed Oct. 17, 1910. Edward V. Fitzpatrick, Clerk. William P. Miedreich, John Brownlee, George K. Denton, Evansville, Indiana, Attorneys for Appellant.

182 In the Supreme Court of the State of Indiana.

FRANCES A. MIEDREICH, Appellant and Plaintiff in Error,
against
CONSTANZE LAUENSTEIN, Appellee and Defendant in Error.

Allowance of Writ.

Comes now Frances A. Miedreich, the Appellant above named, on this — day of October, A. D. 1910 and filed and presents to this court, her petition, praying for the allowance of a writ of error intended to be urged by her; and praying further that a duly authenticated transcript of the records, proceedings and papers upon which the judgment herein was rendered, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had in the premises as may be just and proper;

And upon consideration of the said petition, this court desiring to give petitioner an opportunity to test in the Supreme Court of the United States the questions therein presented, it is ordered by this court that a Writ of Error be allowed, as prayed, provided, however, that the said Frances A. Miedreich, Appellant, give bond according to law in the sum of Three Hundred Dollars ($300.00), which said bond shall operate as a cost bond.

183 In testimony Whereof, witness my hand this 17th day of October, 1910.

LEANDER J. MONKS,
Chief Justice of the Supreme Court of the State of Indiana.

183½ [Endorsed:] 21137. In the Supreme Court of the State of Indiana. Francis A. Miedrich, Appellant and Plaintiff in Error, vs. Constanze Lauenstein, Appellee and Defend'nt in Error. Allowance of Writ. Filed Oct. 17, 1910. Edward V. Fitzpatrick, Clerk. William P. Miedreich, John Brownlee, George K. Denton, Attorneys for Appellant and Plaintiff in Error. Evansville, Indiana.

184 And afterwards, to-wit: on the 29th day of December, 1910, the same being the 28th Judicial Day of the November Term, 1910, of said Supreme Court, the following further pleas and proceedings were had herein:

Comes now the Appellant by counsel, and files a writ of error from the Supreme Court of the United States, to the said Supreme Court of Indiana, in this cause, said writ of error being hereto next below attached, and being as follows:

185 UNITED STATES OF AMERICA:

The President of the United States of America to the Judges of the Supreme Court of the State of Indiana, Greeting:

Because on the record and proceedings, as also on the rendition of a judgment in a plea which is in the said Supreme Court, before you, between Frances A. Miedreich and Constance Lauenstein a manifest error hath happened to the great damage of the said Frances A. Miedreich as by her complaint appears: and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid on this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 23d day of January next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court this 24th day of December, A. D. 1910.

[Seal Circuit Court of the United States, District of Indiana.]

NOBLE C. BUTLER, *Clerk.*

185½ Filed Dec. 29 1910. Edward V. Fitzpatrick, Clerk.

186 And on the same day the following further pleas and proceedings were had in said cause in said Court:

Comes now the Appellant by counsel and files a copy of her bond on appeal to the Supreme Court of the United States, in the penal sum of Three Hundred Dollars ($300.00), which bond is taken and approved, being hereto next below attached, and being as follows:

187 *Bond.*

In the Supreme Court of the United States.

FRANCES A. MIEDREICH, Appellant,
against
CONSTANZE LAUENSTEIN, Appellee.

Bond on Writ of Error.

Know all men by these presents, that we, Frances A. Miedreich of Vanderburgh County, State of Indiana as principal and the American Surety Company of New York as surety are held and firmly bound unto the above named Constanze Lauenstein in the sum of Three Hundred Dollars ($300.00) to be paid to her for the payment of which well and truly to be made we bind ourselves and each of us, our and each of our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these pres-nts.

Sealed with our seals and dated this — day of September, in the Year of Our Lord One Thousand Nine Hundred and Ten.

Whereas, the above named Frances A. Miedreich, Appellant seeks to prosecute her Writ of Error in the Supreme Court of the United States to reverse the judgment rendered in the above entitled action by the Supreme Court of the State of Indiana.

188 Now therefore, the conditions of this obligation are such, that if the above named Appellant shall prosecute her Writ of Error to effect and answer all costs and damages that may be adjudged if she shall fail to make good her plea, then this obligation to be void; otherwise to remain in full force and effect.

[SEAL.] FRANCES A. MIEDREICH. [SEAL.]
AMERICAN SURETY COMPANY OF NEW YORK, [SEAL.]
(By) FRANK SCHWEGMAN, *Res. Vice Pres.*
By HENRY B. WALKER, *Res. Asst. Secty.*

This bond approved this 29th day of December, 1910.

JAS. H. JORDAN,
Acting Chief Justice of the Supreme Court of the State of Indiana.

189 And on the same day, the following further pleas and proceedings were had in said Court in said cause:

Comes now the Appellant, by counsel, and files his citation on

said writ of error, duly signed by Hon. James H. Jordan, acting Chief Justice of the Supreme Court of Indiana for the November Term 1910, and proof of service of the citation, served on the 6th day of January, 1911, by Henry C. Pettit, United States Marshal, said citation and proof of service thereof, being hereto next below attached, and being as follows:

190 *Citation.*

UNITED STATES OF AMERICA, ss:

The President of the United States to Constanze Lauenstein, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C. within thirty (30) days from the date hereof, pursuant to Writ of Error filed in the office of the Clerk of the Supreme Court of the State of Indiana, wherein Frances A. Miedreich is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error as in said Writ of Error mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of Indiana, this 29th day of December, 1910.

JAS. H. JORDAN,
Chief Justice of the Supreme Court of the State of Indiana.

Attest:

[Seal Supreme Court, State of Indiana, MDCCCXVI.]

EDWARD V. FITZPATRICK,
Clerk of the Supreme Court of the State of Indiana.

I, attorney of record for the defendant in error in the above entitled case, hereby acknowledge due service of the above citation, and enter an appearance in the Supreme Court of the United States.

——— ———,
Attorney for Constance Lauenstein.

191 *Proof of Service.*

I received this writ at Evansville, Vanderburgh County, Indiana, on the 4th day of January 1911 and served the same upon the *the* within named Peter Meirer Constanze Lauenstein and Peter Meirer, her attorney of record, by reading same to and in their hearing and delivered a true copy of this writ to them in Evansville Vanderburg County Indiana on the 6th day of January 1911.

HENRY C. PETTIT,
U. S. Marshal,
By HARRY BULLEN FIELD, *Deputy.*

Service of Spa 4.00
.20

Filed Jan. 7, 1911. J. Fred France, Clerk.

191½ [Endorsed:] Marshal's Civil Docket No. 2908. Filed Dec. 29 1910. Edward V. Fitzpatrick, Clerk.

192 And on the same day, the following further pleas and proceedings were had in said Court, in said cause:

Comes now the Appellant, by counsel and files an Assignment of Errors in the Supreme Court of the United States, on the writ of error herein, said assignment of errors being hereto next below attached, and being as follows:

193 *Assignment of Error.*

In the Supreme Court of the United States.

FRANCES A. MIEDREICH, Appellant and Plaintiff in Error,
against
CONSTANZE LAUENSTEIN, Appellee and Defendant in Error.

Assignment of Error.

Comes now the Plaintiff in Error in the above entitled cause and avers and shows that in the record and proceedings in said cause the Supreme Court of the State of Indiana erred to the grievous injury and wrong of the Plaintiff herein and to the prejudice and against the right of the Plaintiff in Error in the following particulars, to-wit:

1. The Supreme Court of Indiana erred in holding that there was due process of law within the meaning of Article Fourteen of the Constitution of the United States with reference to the giving of notice of the Plaintiff in Error, Frances A. Miedreich of the pendency of the proceedings in foreclosure involved in said action upon which proceedings the Defendant in Error, Constanze Lauenstein based her claim to ownership in fee simple of the real estate in controversy.

2. The Supreme Court of Indiana erred in holding valid a judgment of foreclosure against the Plaintiff in Error, Frances A.
194 Miedreich, where no notice had been given to her of the proceedings and no summons served on her and where she had no knowledge of such proceedings and where she did not waive service of process nor did any one for her or in her behalf or by her consent waive service of process or enter appearance for her and where she had no opportunity of being heard in defense of her rights.

3. The Supreme Court of Indiana erred in holding that upon a false return of the sheriff showing service of summons the plaintiff in Error was bound by subsequent proceedings in the absence of any knowledge thereof and that her only remedy was an action against the sheriff upon his bond for such false return.

4. The Supreme Court of Indiana erred in holding that in order to entitle the Plaintiff in Error, Frances A. Miedreich to any relief from the judgment of foreclosure rendered on a false return of the

sheriff, showing service of process, it was necessary for her to show that the plaintiff in the foreclosure proceedings below had actual knowledge of the false return or actually participated in it, the Court saying, "The material thing is knowledge (on the part of the plaintiff below) of the false return."

5. The Supreme Court of Indiana erred in holding that the fourth paragraph of the Amended Complaint did not state facts sufficient to constitute a cause of action or to entitle the plaintiff in error, Frances A. Miedreich to the relief therein demanded or to any relief whatever.

6. The Supreme Court of Indiana erred in holding that the Plaintiff in Error, Frances A. Miedreich was bound by the proceedings in foreclosure where she was not served with process and had no notice or knowledge in any way of said proceedings and
195 had no opportunity either in person, by guardian or by counsel of being heard in defense of her rights.

Wherefore, for these and other manifest errors appearing in the record, the said Frances A. Miedreich, Plaintiff in Error prays that the judgment of the said Supreme Court of Indiana be reversed and set aside and held for naught and that judgment be rendered for Plaintiff in Error granting her her rights under the Statute Laws and Constitution of the United States and Plaintiff in Error also prays judgment for her costs.

WM. P. MIEDREICH,
JOHN BROWNLEE,
GEORGE K. DENTON,
Attorneys for Plaintiff in Error.

Evansville, Indiana.

195½ [Endorsed:] #21137. In the Supreme Court of the United States. Frances A. Miedreich, Appellant and Plaintiff in Error, vs. Constanze Lauenstein, Appellee and defendant in Error. Assignment of Error. William P. Miedreich, John Brownlee, George K. Denton, Evansville, Indiana, Attorneys for Plaintiff in error.

196 STATE OF INDIANA,
In the Supreme Court:

I, J. Fred France, Clerk of the Supreme Court of the State of Indiana, certify the above and foregoing to be a full, true and complete transcript of the record of proceedings had, papers filed, motions decided, rulings made, opinions delivered, judgments rendered, and all decrees and orders entered in the Supreme Court of Indiana, in the above entitled cause No. 21,137, Frances A. Miedreich vs. Constanze Lauenstein, appealed from the Vanderburgh Superior Court; also the original petition for allowance of a writ of error, the original writ of error from the Supreme Court of the United States to the Supreme Court of Indiana, with the allowance thereof; the original citation to the defendant in error and proof of service thereof; a copy of the original bond and its approval by the

Chief Justice of said Supreme Court and the assignment of Errors in the Supreme Court of the United States.

Which said transcript annexed hereto, together with said original petition for the allowance of a writ of error, said original writ of error, original citation, copy of the original bond and original assignment of errors, I hereby certify as and for my full return to said writ of error.

In Witness Whereof, I hereto set my hand and affix the seal of said Supreme Court, at the City of Indianapolis, Indiana, this 10th day of January 1911.

[Seal Supreme Court, State of Indiana, MDCCCXVI.]

J. FRED FRANCE,
Clerk Supreme Court of Indiana.

Jan'y 16, 1911, Received $75.00 in full payment for transcript of record and proceedings, &c. on appeal to U. S. Supreme Court.

J. FRED FRANCE, *Clerk.*

Endorsed on cover: File No. 22,489. Indiana Supreme Court. Term No. 209. Frances A. Miedreich, plaintiff in error, vs. Constanze Lauenstein. Filed January 24th, 1911. File No. 22,489.

132

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 209.

FRANCES A. MIEDREICH, PLAINTIFF IN ERROR,

vs.

CONSTANZE LAUENSTEIN.

Stipulation for Correction of the Record.

Whereas errors have been found in the copy of the opinion (Rec. 98-100), and the copy of the opinion on petition for re-hearing (Rec. 101, 102), in this case,

Therefore it is hereby stipulated by the parties that the official report of those opinions appearing and published in 172 Indiana, 140, shall be and is hereby accepted as true, and correct copies of which opinions so reported in that volume are hereto attached.

It is further stipulated that the Clerk of the Supreme Court of the United States shall cause to be printed this stipulation and the copies attached as parts of the Transcript of Record, and that the same shall then be taken and considered in lieu of pages 98-102 as printed heretofore.

GEORGE K. DENTON,
Attorney for Plaintiff in Error.
L. T. MICHENER,
Attorneys for Defendant in Error.

Opinion of the Supreme Court.

No. 21137.

FRANCES MIEDREICH
vs.
CONSTANZE LAUENSTEIN.

From the Vanderburgh Superior Court.

MYERS, *J.*:

This was an action by appellant against appellee in the Vanderburgh superior court to vacate a judgment of foreclosure of a mort-

gage and sale of her property, and for an accounting for rents, and to be permitted to redeem, on the ground that she had no notice of the original action, and that her property had been taken without any notice, or opportunity to be heard. Both parties have treated this action as one arising under the provisions of article 14 of the federal Constitution, as presenting the question of due process of law, and rights guaranteed by the state and federal Constitutions.

A demurrer by appellee was sustained to the fourth paragraph of complaint for want of facts to constitute a cause of action, an exception was reserved, and that ruling is assigned as error here. The fourth paragraph of complaint, so far as the grounds of relief thereby sought are considered, is predicated on the alleged facts: That when the original foreclosure proceedings were had, under which sale of her property was made, appellant was 12 years of age, and not a resident of Vanderburgh county where the actions were brought, but a resident of Gibson county, and had been for many years; that she was not summoned to appear and defend her interests in said action; that she had no knowledge of the pendency of the action, did not waive service of process, nor did any one for her, or in her behalf, or by her consent enter any appearance for her; that she was not amenable to the jurisdiction of the sheriff of Vanderburgh county, but, notwithstanding the fact that she was not served with process, the sheriff of Vanderburgh county made a false return of a pretended summons, and the court was wrongfully imposed upon by such false return, and being thus falsely advised, at the instance of attorneys for the plaintiff in the cause, appointed a guardian ad litem for her, who filed an answer for her; that a decree was thereupon rendered, her property sold, bid in by the plaintiff in the action; and showing direct privity between the original plaintiff, and the appellee here, and timely application for relief. It is settled in this jurisdiction that such an action may be maintained as a direct attack upon the judgment, certainly so if it can be said to amount to a charge of fraud in procuring notice, or obtaining the judgment. Frankel v. Garrard, 160 Ind. 209, 66 N. E. 687; State v. Hindman, 159 Ind. 586, 65 N. E. 911; Cotterell v. Koon, 151 Ind. 182, 51 N. E. 235; Asbury v. Frisz, 148 Ind. 513, 47 N. E. 328; Kirby v. Kirby, 142 Ind. 419, 41 N. E. 809; Thompson v. McCorckle, 136 Ind. 484, 34 N. E. 813, 36 N. E. 211, 43 Am. St. Rep. 334; Dobbins v. McNamara, 113 Ind. 54, 14 N. E. 887, 3 Am. St. Rep. 626. The paragraph is silent as to what the record shows on the question of notice to appellant, which, in case the complaint could not be said to aver fraud in procuring the process or judgment, would present a different question, for in such case there must be an averment as to what the record shows on the question of notice. Chicago, etc., Co. v. Grantham, 165 Ind. 279, 75 N. E. 265; Layman v. Hughes, 152 Ind. 484, 51 N. E. 1058; Runner, Assignee, v. Scott, 150 Ind. 441, 50 N. E. 479; Bailey v. Rinker, 146 Ind. 129, 45 N. E. 38. The allegations do not present a question of fraudulent conduct on the part of the appellee's predecessor in title, or of his attorneys in procuring a false return, or participation in a fraud upon the court, which is an acknowledged ground of interference of a court of equity.

Frankel v. Garrard, 160 Ind. 209, 66 N. E. 687; Brown v. Eaton, 98 Ind. 591; Cavanaugh v. Smith, 84 Ind. 380.

The question is then presented whether the allegations that appellant was a minor, was not a resident of Vanderburgh county, was a resident of Gibson county, and had been for many years, that no summons was served on her, that she had no knowledge of the proceedings, did not waive service, nor did any one for her, or in her behalf, or with her consent, enter appearance for her, that she was not amenable to the jurisdiction of the sheriff of Vanderburgh county, that, notwithstanding that she was not served with process, the sheriff of Vanderburgh county made a false return of a pretended summons, and the court was wrongfully imposed upon by such false return, and, being thus falsely advised at the instance of plaintiff's attorneys, appointed a guardian ad litem for her, constitute a charge of fraud. The return was regular upon its face. The court had jurisdiction of the subject-matter, and apparently jurisdiction of the person of appellant. The false return was not procured by the fraud, collusion, or imposition of the plaintiff or his attorneys. It is not alleged that either knew of the facts alleged as to there not having been service on appellant. The allegations practically amount to this: If, without any fraud, or any act on the part of a party to an action or his attorney, a return is made by a sheriff showing service regular on its face, without knowledge of the party that there was in fact no service, and no act is done or thing said to mislead the sheriff is it an imposition or fraud upon the court to present such summons and return and obtain a judgment upon it, and is it a charge of fraud or imposition upon the court to allege that the court was wrongfully imposed upon by such false return, and was thus falsely advised? The whole allegation must be taken together, and the scope and theory of the paragraph as we construe it, is that the court was misled by a false return of the sheriff. The court had a right to rely and act upon the return. It imports verity to the court. The sheriff assumes the responsibility, in taking the office, of seeing to it that he does make the right service. State v. Leach, 10 Ind. 308; State v. Lines, 4 Ind. 351. If this were not true, no litigant could ever know when his rights were adjudicated and set at rest, and, to the end that the party may be made whole, an action for a false return will lie. Splahn v. Gillespie, 48 Ind. 397; Howell v. Klein, 44 Ind. 291, 15 Am. Rep. 235. If it be said that the amount of bond a sheriff is required to give might not cover the damage in any or every case, it is sufficient to say that that is a legislative matter, and not a judicial one. Whilst courts should be, and are, tenacious of the rights of minors, yet they must proceed within recognized rules of equity, as well as of law. We do not think that the court erred in sustaining a demurrer to the fourth paragraph.

The cause went to trial on two other paragraphs of complaint explicitly charging fraud on the part of plaintiffs and their attorneys in the original cause in procuring service to be made upon some person whose name and identity is to appellant unknown, by fraudulently representing to the sheriff that such person was the appellant, and thus procured a false return to be made, by which the court was imposed upon and the judgment rendered. The only other error

assigned is upon the overruling of the motion for a new trial, in which the causes, properly assigned, are that the decision is not sustained by sufficient evidence, and is contrary to law. The sole question presented upon the motion was as to whether appellant had been served with summons in the original cause. The evidence was conflicting, and the court found against appellant on the evidence on the only question in the cause, and there was legal evidence supporting the finding. We cannot disturb the decision upon the weight of the evidence in this character of action any more than in any other kind of adversary action. Murrer v. Security Co., 131 Ind. 35, 30 N. E. 879, and cases cited.

The judgment is affirmed.

Opinion on Petition for Rehearing.

On Petition for Rehearing.

MYERS, *J.*:

Counsel urge, upon petition for rehearing, that we were in error in holding that the fourth paragraph of the complaint is not based upon fraud upon the part of appellee's remote grantors in procuring a false return. This urgency is based upon the fact that after recital of the historical events in connection with the foreclosure suit, and the fact that there was no service in fact, and a false return, a judgment, foreclosure and sale, that an agent and attorney in fact of appellee's remote grantor "had personal knowledge of the facts herein alleged," and that this allegation sufficiently charges fraud, in the fact of such general allegation of knowledge. It is not averred that appellee's grantor or her attorneys participated in any act to procure a false return, nor any other allegation to couple specific knowledge with the specific fact of a false return.

If, in order that the paragraph should be held good, it is necessary to hold that the language quoted imputes knowledge such as to charge fraud, there is no reversible error in sustaining the demurrer, for the first and fifth paragraphs are grounded upon knowledge of the false return, and conspiracy of appellee's remote grantor, and imposition on the officer, and a false return produced, with the identical allegation as the fourth as to knowledge, and required no other or different evidence to sustain them than would have been required under the fourth, unless it can be said that knowledge that the return was false is different from active participation in procuring a false return; but we apprehend that if a party knows that a return is false, and procures a judgment upon it, he is legally as culpable as if he were an active participant. The material thing is knowledge of the false return, and it is immaterial whether a party knows a return is false, either as a matter of independent knowledge or by participating in procuring it, for in either case the judgment should be set aside, and we should not hesitate to do so, if such a case were made.

We have again read the evidence in this case and there is no evidence of knowledge on the part of appellee's remote grantors or her

attorneys of the fact that the return was false, and, while the facts alleged in the complaint show an apparent hardship, it is not a different hardship from that which arises in every case where property is bought at enforced sale for a less sum than its value. The evidence shows that the appellant's uncle with whom she lived, and who has a large lien against the same property, would not, or could not, give the amount of the mortgage debt for it and take the certificate of purchase, though urged for a year by appellee's grantor to do so, which fact is a strong circumstance against the theory of an attempt to obtain appellant's property by means of a false return.

Upon the question of the sufficiency of the evidence to support the decision, we think that it is fully supported.

Petition for rehearing denied.

[Endorsed:] File No. 22,489., Supreme Court U. S., October Term, 1912. Term No. 209. Frances A. Miedreich, Pl'ff in Error, vs. Constanze Lauenstein. Stipulation of counsel for correction of record. Filed December 26, 1912.

FILED.
OCT 2 1913
JAMES H. McKENNEY,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1913.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN
} No. 20.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

BRIEF OF THE PLAINTIFF IN ERROR.

GEORGE K. DENTON,
For Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1913.

No. 20.

FRANCES A. MIEDREICH, PLAINTIFF IN ERROR.

vs.

CONSTANZE LAUENSTEIN, DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

INDEX.

Statement of case..... 1- 9
Errors Relied on.....10-11

Points and Authorities,
- The Federal Question..... 12
- Due Process of Law.....12-13
- Jurisdiction.....13-15
- Review of Decision of State Courts.....16-18
- Remedy.....19-20

Argument,
- The Federal Question.....21-22
- Due Process of Law..... 22
- Jurisdiction..... 23
- Review of Decisions of State Courts.....23-25
- Remedy..... 25
- Evidence.....25-27
- Conclusion.....27-28

INDEX TO CASES CITED

Atherton v. Atherton, 181 U. S. 155, 160..... 12
Bigler v. Waller, 14 Wall, 297, 20 L. Ed. 891..... 18
Bramlett v. McVey, 91 Ky. 151, 15 S. W. 49..... 19
Bruer v. Osgood, 154 Ind. 375..... 20

Bryan v. Brosins, 162 U. S. 415, 40 L. Ed. 1022..... 18
Butler v. Thornburgh, 153 Ind. 530..... 19
Carpenter v. Strange, 141 U. S. 87, 108..... 12
Campbell v. Warderect, 50 Neb. 288, 61 Am. St. Rep. 673..... 15
Carver et al v. Carver, 64 Ind. 194..... 15
Cassidy v. Automatic Time Stamp Co., 185 Ill. 431, 56 N. E. 1116..... 19
Chicago Board of Trade v. Hammond Elevator Co., 198 U. S. 424, 49 L. Ed. 1111.....13-16
Cooper v. Reynolds, 10 Wall 308..... 16
Damron v. Overmeyer Adm., 141 Ind. 488..... 18
Davis v. Cleveland, C. & C. & St. L. Ry. Co., 84 C. C. A. 453-156 Fed. 475..... 17
DeArcy v. Ketchum, 11 How. 165, 13 L. Ed. 648..... 14
Dobbins v. McNaruara, 113 Ind. 54..... 20
Dowell v. Goodwin, 22 R. I. 287, 47 Atl. 693..... 20
Dower v. Richards, 151 U. S. 658, 6675, 38 L. Ed. 305-308..... 17
Dubois v. Clark, 12 Colo. App. 220, 55 Pac. 750..... 19
Earle v. McVeigh, 91 U. S. 507, 23 L. Ed. 398..... 16
Emerick v. Miller, 159 Ind. 317, 328..... 20
Ferguson v. Crawford, 70 N. Y. 253, 26 Am. Rep. 580-601..... 16
Galpin v. Page, 18 Wall 350, 21 L. Ed. 959-962..... 15
Goldey v. Morning New, 156 U. S. 518, 39 L. Ed. 517. 14
Hall v. Lanning, 91 U. S. 160, 23 L. Ed. 271..... 14
Hollingsworth v. Barbour, 4 Peters 466.....13-14
Hauswurth v. Sullivan, 6 Mont. 203, 9 Pac. 798...15-16-19
Hermandez v. James, 23 La Ann. 483..... 19
Hendrickson v. Hinckley, 17 How. 443, 15 L. Ed. 123. 19
Huntington v. Atrill, 146 U. S. 657, 683, 23 L. Ed. 123, 1133.....12-18
Huntington v. Crouter, 33 Ore. 408, 54 Pac. 208 20
Ingle v. McCurry, 1 Heisk (Tenn) 26..... 20
Johnson v. Coleman, 23 Wis. 452, 99 Am. Dec. 193.... 20
Jones v. Commercial Bank, 5 How. (Miss) 43, 35 Am. Dec. 419..... 19
Johnson v. Gregory, 4 Wash. 111, 29 Pac. 83...15-16-20-28
Johnson v. Hosford, 110 Ind. 572..... 18
Jacobs v. Marks, 182 U. S. 583, 587..... 12
Knowles v. Logansport Gaslight & Coke Co. 86 U. S. 19 Wall 58, 22 L. Ed. 70.....13-14

Kansas City S. R. Co. v. C. H. Albers Commission Co., 223 U. S. 573, 56 L. Ed. 556 17
Louisville Gas Co. v. Citizens Gas Light Co., 115 U. S. 683, 697 29 L. Ed. 510, 515 18
Lapham v. Campbell, 61 Cal. 296 19
McClurg v. Whorter, 47 W. Va. 150 15
McNeill v. Edie, 24 Kan. 108 19
Mackey v. Dillon, 4 How. 421-447-11 L. Ed. 1038, 1050 17
Marine Ins. Co. v. Hodgson, 7 Cranch 332, 3 L. Ed. 362 19
Martin v. Barney, 20 Ala. 369 19
Mather v. Parsons, 32 Hun (N. Y.) 338 20
Murres v. Security Co. 131 Ind. 37 15
Miller v. Gorman, 38 Pa. St. 309 20
Murray v. Hoboken Land Co., 18 How. 272, 15 L. Ed. 372 18
Mechanical Appliance Co. v. Castleman, 215 U. S. 437 54 L. Ed. 272 15-17
Nations v. Johnson, 24 How. 203, 16 L. Ed. 631 16
Needham v. Thayer, 147 Mass. 536, 18 N. E. 429 16
Noyes v. Hall, 97 U. S. 34, 24 L. Ed. 909 18
Pennoyer v. Neff, 95 U. S. 714, 24 L. Ed. 565 12-13-14-22
Phillips v. Negley, 117 U. S. 665, 29 L. Ed. 1013, 1015 .. 19
Remington v. Central P. R. R. Co. 198 U. S. 95 13-16
Roming v. Gillett, 187 U. S. 117, 47 L. Ed. 97 18
Ruff v. Elkin, 40 S. C. 69, 18 S. E. 220 20
Russell v. Southard, 12 How. 139, 13 L. Ed. 927 18
Ryan v. Boyd, 33 Ark. 778 19
Shepherd v. Adams, 168 U. S. 618. 42 L. Ed. 602 13-16
Schlemmer v. Buffalo R. & P. R. Co., 205 U. S. 1, 51 L. Ed. 681 18
Smith v. Morrill, 11 Colo. App. 284 15
Starbuck v. Murray, 5 Wend. 148 16
Stanley v. Schwalby, 162 U. S. 255, 274, 277-279, 40 L. Ed. 960, 966, 968 18
State v. Dashiell, 32 Tex. Civ. App. 454, 74 S. W. 779. 20
St. Louis & Southwestern R. Co. v. Arkansas, 217 U. S. 135, 54 L. Ed. 698 17
St. Louis Cotton Compress Co. v. American Cotton Co., 60 C. C. A. 80-125 Fed. 196 17
Stearns v. Minnesota, 179 U. S. 223, 233 12
Thompson v. Whitman, 18 Wall 457, 21 L. Ed. 897.12-13-15
United States v. John, 155 U. S. 109, 39 L. Ed. 87, 15 Sup. Ct. Rep. 39 17
Villa v. Rodriguez, 12 Wall 323, 20 L. Ed. 406 18

Wabash Western R. Co. v. Brow, 164 U. S. 271, 41 L. Ed. 431 15
Walker v. Robbins, 14 How. 584, 14 L. Ed. 552 20
Wardsboro v. Whitingham, 45 Vt. 450 20
Willman v. Willman, 57 Ind. 50 19
Wilson v. Seligman, 144 U. S. 41, 36 L. Ed. 338 14
Windsor v. McVeigh, 93 U S 274, 27 L. Ed. 914 12-16
Wolf v. Shenandoah Nat'l Bank 84 Iowa, 138, 50 N. W. 561 19
Wonderly v. LaFayette Co. 150 Mo. 635, 45 L. R. A. 386. 16
Wilson v. Standefur, 184 U. S. 399, 411 12
York v. Texas, 137 U. S. 15, 34 L. Ed. 604 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1913.

FRANCES A. MIEDREICH
vs.
CONSTANZE LAUENSTEIN
} No. 20.

IN ERROR TO THE SUPREME COURT OF THE STATE OF INDIANA.

BRIEF OF THE PLAINTIFF IN ERROR.

STATEMENT.

This is a writ of error from the Supreme Court of the United States to the Supreme Court of the State of Indiana, to review the latter's decision in a cause of action originating in the Superior Court of Vanderburgh County, Indiana, wherein the plaintiff in error was plaintiff and the defendant in error was defendant.

The action was brought by plaintiff in error for the purpose of recovering and redeeming certain

real estate described in the complaint and which had been sold by the Sheriff of Vanderburgh County, Indiana, under an order of sale issued by the Clerk of said county on a judgment of foreclosure of mortgages rendered by said Superior Court of Vanderburgh County, Indiana.

The facts set forth in the several paragraphs of plaintiff's complaint and adduced by the evidence are substantially as follows: The plaintiff in error is the daughter and only heir of John Juchert and Rose C. Juchert, both deceased, and both dying intestate. She was born in June 1883 and attained her majority in June 1904. On the Fourth day of June 1892, the plaintiff in error became the owner in fee simple by deed of conveyance duly recorded on the same day in the office of the Recorder of Vanderburgh County, Indiana, of Lot number twenty-four (24), in Block number eleven (11), in Kazar's Division, an addition to the City of Evansville, Indiana, subject to a life estate of her Mother who died intestate in October, 1900. (Printed Record, p. 2, 33)

At the time plaintiff in error became the owner of said real estate, one Elsie Lauenstein held two mortgages aggregating fifteen hundred dollars ($1500.00) on said property and four additional parcels of real estate situated in the city of Evansville, Indiana, which are fully described in the complaint filed herein. (Printed Record, pp. 2-3, 39, 40, 41)

Said mortgages had been executed by the Father and Mother of plaintiff in error, the Father at the time of the execution of said mortgages, was the owner of all of said real estate. (Printed Record, p. 17, 39, 40, 41)

Said property at that time was reasonably worth the sum of five thousand dollars ($5,000.00) and at the time of trial in the said Superior Court of Vanderburgh County, Indiana, was reasonably worth six thousand dollars ($6,000.00). (Printed Record pp. 11, 13, 14, 23 and 77-78)

In November 1895, said Elsie Lauenstein brought proceedings in the Superior Court of Vanderburgh County, Indiana to foreclose said mortgages on all of the above named property. (Printed Record, pp. 9, 11, 14, 17, 23, 35)

An attempt was made to make the plaintiff in error a party defendant in said foreclosure proceedings by issuing summons to the Sheriff of Vanderburgh County, Indiana, directing him to serve said plaintiff in error with process. (Printed Record, pp. 9, 11, 14, 18, 24, 44)

At the time said foreclosure proceedings were brought the plaintiff in error was twelve years of age and was not a resident of Vanderburgh County, Indiana, but was a resident of Gibson County, Indiana, and had resided there with relatives, for many years prior thereto and did not come within the bounds of Vanderburgh County, Indiana, during the pendency of said suit. (Printed Record, pp. 9, 11, 14, 18, 24, 65, 66)

The plaintiff in error was not summoned to appear and defend her interests in said action; she had no knowledge of the pendency of said action; she did not waive service of process nor did anyone for her or in her behalf or by her consent waive service of process or enter appearance for her. She was not amenable to the jurisdiction of the Sheriff of Vanderburgh County, Indiana, but notwithstanding that fact and the fact that she was not served

with process, the said sheriff made a false return on a pretended summons and the court trying said cause was wrongfully imposed upon by being presented with said pretended summons with the false return endorsed thereon, showing that she had been served with process; the court believing the said return to be true, at the instance of the then plaintiff's attorneys appointed a guardian ad litem for plaintiff in error who filed a formal answer for her, after which the cause proceeded to judgment against her. (Printed Record, pp. 9, 11, 12, 14, 18, 24, 65, 66)

The Father of plaintiff in error was served with process by the Sheriff of Gibson County, Indiana. (Printed Record, p. 41) The Mother of plaintiff in error was notified by publication as a non-resident. (Printed Record, pp. 45, 46) Both were defaulted at the trial. (Printed Record, p. 51) Judgment of foreclosure was rendered against them and thereafter an order of sale of all of said real estate was issued against them and the plaintiff in error. (Printed Record pp. 51, 52, 56) At the sheriff's sale, the five parcels of real estate were sold to Frederick Lauenstein, attorney in fact, for the said Elsie Lauenstein for the sum of one thousand nine hundred and eighty-eight dollars ($1988.00). As such attorney in fact, said Frederick Lauenstein transferred the three certificates of purchase issued at said sheriff's sale to a third party who immediately transferred them to said Frederick Lauenstein in his individual capacity and to whom in due time a sheriff's deed to all of said property was delivered. (Printed Record pp. 81, 86)

Said Frederick Lauenstein departed this life, testate, previous to the filing of the complaint

herein, by plaintiff in error. (Printed Record, p. 84) Said Frederick Lauenstein devised all of his real estate, including the above mentioned parcels, to his wife Constanze Lauenstein, the defendant in error herein and no intervening rights are involved in this case. (Printed Record p. 90)

Plaintiff in error had no actual knowledge that she was the owner at any time of said Lot number twenty-four (24) in Block number eleven (11) in Kazar's division, an addition to the city of Evansville, Indiana, nor that any attempt had ever been made to join her as a party to the aforesaid foreclosure proceedings until within six weeks just prior to the time plaintiff in error filed her complaint against the defendant in error herein, and such proceedings were timely and brought within the two year period of grace given to minors by the Statutes of the State of Indiana. (Printed Record pp. 19, 67)

The property involved in this proceeding consists of five lots with the improvements thereon situate which were at all times rented, the annual rental thereof being approximately Five hundred and forty dollars ($540.00.) (Printed Record p. 19)

The defendant has no other interest or title in said real estate other than that derived by the purchase under the decree of foreclosure aforesaid, by her husband the said Frederick Lauenstein and by him devised to her. (Printed Record p. 19)

The plaintiff in error prayed for an accounting and for permission to redeem said real estate by doing whatever was proper and equitable under the circumstances as set forth in her complaint filed herein. (Printed Record pp. 19, 20)

In addition to the foregoing facts, the fifth paragraph of the complaint (Printed Record pp.

23, 24, 25, 26) alleged that the then plaintiff's or their attorneys carelessly, negligently, wrongfully and fraudulently directed the summons in the foreclosure proceeding to be issued to the Sheriff of Vanderburgh County; that they or their attorneys carelessly, negligently, wrongfully and fraudulently directed the Sheriff of Vanderburgh County to serve said pretended summons upon some person whose name and identity is to this plaintiff in error unknown, and carelessly and fraudulently represented that said person was this plaintiff in error and the said Sheriff wrongfully served said pretended summons, and said plaintiff's through their attorneys and said sheriff caused the court before which said cause was pending to be wrongfully, falsely and fraudulently advised in the premises, whereupon the Court appointed a guardian ad litem to answer to her interests by requiring proof of the allegations of the complaints. (Printed Record pp. 24, 25)

May 4, 1906 defendant in error filed a demurrer to the Fourth paragraph of Plaintiff in error's complaint and for cause of demurrer stated that same does not state facts sufficient to constitute a cause of action. (Printed Record, pp. 20, 21)

June 11, 1906, the court sustained the demurrer to the Fourth paragraph of complaint. (Printed Record p. 21)

The cause proceeded to trial on the Fifth paragraph of the amended Complaint. (Printed Record pp. 23, 24, 25, 26) and on June 27, 1907 the court rendered judgment in favor of defendant in error and against plaintiff in error. (Printed Record p. 91)

Motion for a new trial was filed by plaintiff in error on June 29, 1907. (Printed Record p. 92)

which motion was by the court overruled, (Printed Record p. 91) and plaintiff thereupon appealed to the Supreme Court of the State of Indiana.

The Supreme Court of the State of Indiana affirmed the judgment of the Superior Court of Vanderburgh County, Indiana. (Corrected Printed Record, pp. 1, 2, 3, 4) Plaintiff in error filed her petition for a rehearing before said court, (Printed Record p. 100) which petition was overruled by the court, (Corrected Printed Record, pp. 4, 5)

From this judgment the plaintiff in error prosecuted error to this court, the petition for the writ of error appearing in the printed record on pages 102 and 103; the allowance of the writ of error on pages 103 and 104; the writ of error appearing on page 104, and the assignment of error on pages 107 and 108.

The grounds for the decision of the Supreme Court of the State of Indiana in affirming the decision of the Superior Court of Vanderburgh County, Indiana, sustaining the demurrer to the Fourth paragraph of the amended complaint filed by the plaintiff in error herein are, the paragraph is silent as to what the record shows on the question of notice to plaintiff in error; that the allegations without any fraud or any act on the part of defendant in error or her attorney, a return is made by the Sheriff of Vanderburgh County, Indiana, showing service, without knowledge of the defendant in error that there was in fact no service, and no act was done or thing said to mislead the Sheriff, that said false return was presented to the court and the court was misled thereby, are not sufficient to state a cause of action for it is not an imposition or fraud upon the Court to present

such summons with the return thereon and obtain a judgment on it and it was not a charge of fraud or imposition on the court to allege that the court was wrongfully imposed upon by such false return and was thus falsely advised. The scope and theory of this paragraph as interpreted by the Supreme Court of the State of Indiana is that the trial court was misled by a false return of the Sheriff. This is held not to be sufficient to state a cause of action even though the allegations that the plaintiff in error was a minor, was not a resident of Vanderburgh County, Indiana but was a resident of Gibson County, Indiana and had been for many years, that no summons or process was served on her, that she had no knowledge of the proceedings, did not waive service nor did anyone for her or in her behalf or with her consent enter appearance for her, that she was not amenable to the jurisdiction of the Sheriff of Vanderburgh County, Indiana and had no opportunity to be heard in defense of her rights, are included in and made a part of this paragraph of said complaint.

The grounds for the decision of the Supreme Court of the State of Indiana in affirming the judgment of the Superior Court of Vanderburgh County, Indiana, which rendered judgment in favor of defendant in error at the trial of this cause for the reasons that it is not only necessary for plaintiff in error to prove absence of service of process, but she must allege and prove fraud on the part of defendant in error in procuring a false return of the summons, that the proof of absence of service, whilst it may work a hardship upon plaintiff in error is not sufficient, there must be a positive showing of active fraud on the part of defendant in error in procuring the false return or that she had knowledge of the false return at the

time of the trial of the case; that although plaintiff in error had no opportunity of appearing in court and defending her rights in the property and although the plaintiff in the foreclosure proceedings failed and neglected to notify or bring knowledge to the plaintiff in error of the pendency of such foreclosure proceedings and by such neglect on the part of the plaintiff in the foreclosure proceedings this plaintiff in error was deprived of her property without a hearing in Court and without due process of law, yet such judgment could not be set aside without proof of active participation of defendant in error in procuring a false return of process or actual knowledge of its falsity at the time of trial.

As stated by the Supreme Court of the State of Indiana, the question involved is whether the Superior Court of Vanderburgh County, Indiana, acquired jurisdiction of the person of plaintiff in error in the foreclosure proceedings by means of a false return of the sheriff of Vanderburgh County on a pretended summons issued in said foreclosure proceedings, which showed a personal service of process upon plaintiff in error when in truth and fact there was no such service.

The determination of this question involves several federal questions, which will be discussed later under that head.

ERRORS RELIED ON.

In the petition for allowance of the writ of error (Printed Record, pp. 102, 103) and in the assignment of errors in this court (Printed Record, pp. 107, 108) it is charged that, in the decision of the Supreme Court of the State of Indiana, affirming the judgment of the Superior Court of Vanderburgh County:

1. The Supreme Court of Indiana erred in holding that there was due process of law within the meaning of Article Fourteen of the Constitution of the United States with reference to the giving of notice to the Plaintiff in Error, Frances A. Miedreich, of the pendency of the proceedings in foreclosure involved in said action upon which proceedings the Defendant in Error, Constanze Lauenstein based her claim to ownership in fee simple of the real estate in controversy.

2. The Supreme Court of Indiana erred, in holding valid a judgment of foreclosure against the Plaintiff in Error, Frances A. Miedreich, where no notice had been given to her of the proceedings and no summons served on her and where she had no knowledge of such proceedings and where she did not waive service of process nor did anyone for her or in her behalf or by her consent waive service of process or enter appearance for her and where she had no opportunity of being heard in defense of her rights.

3. The Supreme Court of Indiana erred in holding that upon a false return of the sheriff showing service of summons the plaintiff in Error was bound by subsequent proceedings in the ab-

sence of any knowledge thereof and that her only remedy was an action against the sheriff upon his bond for such false return.

4. The Supreme Court of Indiana erred in holding that in order to entitle the Plaintiff in Error, Frances A. Miedreich to any relief from the judgment of foreclosure rendered on a false return of the sheriff, showing service of process, it was necessary for her to show that the plaintiff in the foreclosure proceedings below had actual knowledge of the false return or actually participated in it, the Court saying, "The material thing is knowledge (on the part of the plaintiff below) of the false return."

5. The Supreme Court of Indiana erred in holding that the fourth paragraph of the Amended Complaint did not state facts sufficient to constitute a cause of action or to entitle the plaintiff in error, Frances A. Miedreich to the relief therein demanded or to any relief whatever.

6. The Supreme Court of Indiana erred in holding that the Plaintiff in Error, Frances A. Miedreich was bound by the proceedings in foreclosure where she was not served with process and had no notice or knowledge in any way of said proceedings and had no opportunity either in person, by guardian or by counsel of being heard in defense of her rights.

POINTS AND AUTHORITIES.

1. THE FEDERAL QUESTION.

Each of the six assignments of error state a federal question, arising under the Fourteenth Amendment to the Constitution of the United States of America.

A federal question was stated in the decision of the Supreme Court of the State of Indiana in deciding this cause. (Corrected Printed Record, p. 2)

Miedreich vs. Lauenstein, 172 Ind. P. 140.

The federal questions were necessarily involved in this case, and, as the Supreme Court of the State of Indiana decided them, it is not material whether that court stated them as federal questions or not.

Carpenter vs. Strange, 141 U. S. 87, 103.
Huntington vs. Attrill, 146 U. S. 657, 683.
Atherton vs. Atherton, 181 U. S. 155, 160.
Jacobs vs. Marks, 182 U. S. 583, 587.
Stearns vs. Minnesota, 179 U. S. 223, 233.
Wilson vs. Standefer, 184 U. S. 399, 411.

2. DUE PROCESS OF LAW.

No state shall deprive any person of life, liberty or property without due process of law.

XIV. Amend. Constitution of U. S.
Windsor v. McVeigh, 93 U. S. 274, 23 L. ed. 914.
Pennoyer v. Neff, 95 U. S. 714, 24 L. ed. 565.
Thompson vs. Whitman, 18 Wall, 457, 21 L. Page 897.

"Due process of law" implies a tribunal of competent jurisdiction, and a sufficient service on the defendant, or an appearance on his part, to render him amenable to that jurisdiction.

Pennover vs. Neff, 95 U. S. 714, 24 L. Ed. 565, 572.

An opportunity to be heard is essential to due process of law.

Murray v. Hoboken Land Company, 18 How. 272, 15 L. ed. 372.

By the general law of the land, no court is authorized to render a judgment or decree against anyone, or his estate, until after due notice by service of process to appear and defend.

Hollingsworth v. Barbour, 4 Peters 466, 7 L. ed. 922.

Knowles v. Logansport Gas Company, 19 Wall 58, 22 L. ed. 70.

Thompson v. Whitman, 18 Wall 457, 21 L. ed. 897.

3. JURISDICTION.

In its restricted sense, jurisdiction means the power to decide. Without this any judgment is subject to direct or collateral attack as an absolute nullity. Jurisdiction of this kind is twofold; (1) of the subject matter, (2) of the person. If either is wanting there is no jurisdiction.

Chicago Board of Trade vs. Hammond Elevator Co. 198 U. S. 424, 49 L. ed. 1111.

Shepherd vs. Adams, 168 U. S. 618, 42 L. Ed. 602, 18 Sup. Ct. Rep. 214.

Remington vs. Central R. R. Co. 198 U. S. 95, 49 L. Ed. 959, 25 Sup. Ct. Rep. 577.

It is an elementary principle of jurisprudence that a court of justice cannot acquire jurisdiction over the person of one who has no residence within its territorial jurisdiction, except by actual service of notice within the jurisdiction upon him or upon some one authorized to accept service in his behalf or by his waiver, by general appearance or otherwise, of the want of due service.

D'Arcy vs. Ketchum, 52 U. S. 11 How 165 (13, L. Ed. 648)
Knowles vs. Logansport Gaslight & Coke Co., 86 U. S. 19 Wall 58 (22, L. Ed. 70)
Hall vs. Lanning, 91 U. S. 160 (23, L. Ed. 271)
Pennoyer vs. Neff, 95 U. S. 714 (24, L. Ed. 565)
York vs. Texas, 137 U. S. 15, (34, L. Ed. 604)
Wilson vs. Seligman, 144 U. S. 41 (36 L. Ed. 338)
Goldey vs. Morning News, 156 U. S. 518, 39 L. Ed. 517.

Service of a mesne process from a court of a State, not made upon a defendant or his authorized agent within the state although there made in some other manner recognized as valid by its legislative acts and judicial decisions, can be allowed no validity in the circuit court of the U. S. after the removal of the cause into that court, pursuant to the acts of congress, unless the defendant can be held by virtue of a general appearance or otherwise to have waived the defect in the service, and to have submitted himself to the jurisdiction of the court.

Goldey v. Morning News, 156 U. S. 518, 39 L. Ed. 517.

Process must be personally served on minors in order that jurisdiction may be acquired, and no guardian ad litem can be appointed by the court for an infant defendant who has not been personally served with process, if a resident, or if a non-resident with notice by publication.

Carver et al v. Carver 64 Ind. 194.
Galpin vs. Page 18 Wall, 350 21 L. Ed. 959, 962.

The Federal courts will not give effect to a judgment in a state court unless the state court has lawfully acquired jurisdiction of the defendant, even despite recitals in the judgment of the state court of facts which, if true, would have given it jurisdiction.

Thompson v. Whitman, 18 Wall 457, 21 L. Ed. 897.
Mechanical Appliance Co. vs. Castleman, 215 U. S. 437, 54 L. Ed. 272.

Returns of officers of service of process may be impeached.

Hauswurth v. Sullivan, 6 Mont. 203, 9 Pac. 798.
Smith v. Movill, 11 Colo. App. 284.
McClurg v. Whorter, 47 W. Va. 150.
Campbell v. Warderect 50 Neb. 282, 61 Am. St. Rep. 673.
Murres v. Security Co. 131 Ind. 37.
Johnson v. Gregory, 4 Wash. 111, 29 Pac. 83.
Wabash Western R. Co. v. Brow 164 U. S. 271, 41 L. Ed. 431, 17 Sup. Ct. Rep. 126.
Mechanical Appliance Co. vs. Castleman, 215 U. S. 437, 54 L. Ed. 272.

4. REVIEW OF DECISION OF STATE COURTS.

A domestic judgment is open to jurisdictional inquiries.

Needham v. Thayer, 147 Mass. 536, 18 N. E. 429.

Nations vs. Johnson, 24 How. 195, 203, 16 L. Ed. 628, 631.

Earle v. McVeigh, 91 U. S. 507, 23 L. Ed. 398

Starbuck vs. Murray, 5 Wend. 148 Am. Dec. 172.

Windsor vs. McVeigh, 93 U. S. 274, 23 L. Ed. 914.

Cooper vs. Reynolds, 10 Wall 308, 19 L. Ed. 931.

Wonderly vs. Lafayette Co. 150 Mo. 635, 45 L. R. A. 386.

Ferguson vs. Crawford, 70 N. Y. 253, 26 Am. Rep. 580, 601.

Hauswurth vs. Sullivan 6 Mon. 203, 9 Pac. R. 798.

Johnson vs. Gregory, 4 Wash. 111, 31 Am. St. Rep. 308, 29 Pac. 83.

A judgment rendered without jurisdiction can be reviewed on a writ of error sued out to the Supreme Court of the United States.

Chicago Board of Trade v. Hammond Elevator Co. 198 U. S. 424, 49 L. Ed. 1111.

Shepherd vs. Adams, 168 U. S. 618, 42 L. Ed. 602, 18 Sup. Ct. Rep. 214.

Remington vs. Central P. R. R. Co., 198 U. S. 95, 49 L. Ed. 959, 25 Sup. Ct. Rep. 577.

Davis & Cleveland C. C. & St. L. Ry. Co., 84 C. C. A. 453, 156 Fed. 475.

United States vs. John, 155 U. S. 109, 39 L. Ed. 87, 15 Sup. Ct. Rep. 39.

St. Louis Cotton Compress Co. vs. American Cotton Co., 60 C. C. A. 80, 125 Fed. 196.

Mechanical Appliance Co. vs. Castleman, 215 U. S. 437, 54 L. Ed. 272.

Neither the finding nor the rulings of the State court should be permitted to prevent the determination of the right asserted under the Constitution and laws of the United States.

St. Louis & Southwestern R. Co. vs. Arkansas, 217 U. S. 136, 54 L. Ed. 698, 29 L. R. A. N. S. 802, 30 Sup. Ct. Rep. 476.

Kansas City S. R. Co. v. C. H. Albers, Commission Co., 223 U. S. 573, 56 L. Ed. 556.

The U. S. Supreme Court may examine the entire Record including the evidence, if properly incorporated therein, to determine whether what purports to be a general finding of facts against one party necessarily involves the decision of questions of law bearing upon a Federal right claimed by such party in the State court.

Kansas City S. R. Co. vs. C. H. Albers Commission Co., 223 U. S. 573, 56 L. Ed. 556.

Mackay vs. Dillon, 4 How. 421, 447, 11 L. Ed. 1038, 1050.

Dower vs. Richards, 151 U. S. 658, 667, 38 L. Ed. 305, 308, 14 Sup. Ct. Rep 452, 17 Mov. & Min. Rep. 704.

Stanley vs. Schwalby, 162 U. S. 255, 274, 277-279, 40 L. Ed. 960, 966, 968, 16 Sup. Ct. Rep. 754.

Schlemmer v. Buffalo, R. & P. R. Co. 205 U. S. 1, 51 L. Ed. 681, 27 Sup. Ct. Rep. 407.

Louisville Gas Co. vs. Citizens Gas Light Co., 115 U. S. 683, 697, 29 L. Ed. 510, 515, 6 Sup. Ct. Rep. 265.

Huntington vs. Attrill, 146 U. S. 657, 683, 36 L. Ed. 1123, 1133, 13 Sup. Ct. Rep. 224.

Parties interested in the premises who were not served with process, are not bound by a decree of foreclosure of a mortgage thereon, and may redeem from sale thereunder, the same as if no decree had been made.

Noyes vs. Hall, 97 U. S. 34, 24 L. Ed. 909.

Damron vs. Overmeyer, Adm. 141 Ind. 438.

Johnson vs. Hosford, 110 Ind. 572.

The right of redemption is a favored right.

Russel v. Southard, 12 How. 139, 13 L. Ed. 927.

Villa vs. Rodriguez, 12 Wall, 323, 20 L. Ed. 406.

Bigler v. Waller, 14 Wall, 297, 20 L. Ed 891.

Noyes vs. Hall, 97 U. S. 34, 24 L. Ed. 909.

Bryan v. Brasius, 162 U. S. 415, 40 L. Ed. 1022.

Romig vs. Gillett, 187 U. S. 111, 47 L. Ed. 97.

5. REMEDY.

The appropriate remedy for relief against judgments at law wrongfully obtained is a bill in Equity.

Marine Ins. Co. vs. Hodgson 7 Cranch 332, 3 L. Ed. 362.
Hendrickson vs. Hinckley, 17 How. 443, 15 L. Ed. 123.
Phillips vs. Negley, 117 U. S. 665, 29 L. Ed. 1013, 1015.
Butler vs. Thornburgh, 153 Ind. 530.

Equity may vacate or enjoin a judgment in an action of which defendant had no legal notice, the trial court assuming jurisdiction on the strength of a false return of service of process by the sheriff or other officer.

Willman vs. Willman, 57 Ind. 50.
Martin vs. Barney, 20 Ala. 369.
Ryan vs. Boyd, 33 Ark. 778.
Lapham vs. Campbell, 61 Cal. 296.
Du Bois vs. Clark, 12 Colo. App. 220, 55 Pac. 750.
Cassidy v. Automatic Time Stamp Co., 185 Ill. 431, 56 N. E. 1116.
Wolf vs. Shenandoah Nat'l Bank, 84 Iowa 138, 50 N. W. 561.
McNeill v. Edie, 24 Kan. 108.
Bramlett vs. McVey, 91 Ky. 151, 15 S. W. 49.
Hernandez vs. James, 23 La Ann 483.
Jones vs. Commercial Bank, 5 How. Miss. 43, 25 Am. Dec. 419.
Hauswurth vs. Sullivan, 6 Mont. 203, 9 Pac. 798.

Mather vs. Parsons, 32 Hun. (N.Y.) 338.
Huntington vs. Cronter, 33 Ore. 408, 54 Pac. 208.
Miller vs. Gorman, 38 Pa. St. 309.
Dowell vs. Goodwin, 22 R. I. 287, 47 Atl. 693.
Ruff vs. Elkin, 40 S. C. 69, 18 S. E. 220.
Ingle vs. McCurry, 1 Heisk (Tenn) 26.
State vs. Dashiell, 32 Tex. Civ. App. 454, 74 S. W. 779.
Wardsboro vs. Whitingham, 45 Vt. 450.
Johnson vs. Gregory, 4 Wash. 109, 29 Pac. 831.
Johnson vs. Coleman, 23 Wis. 452, 99 Am. Dec. 193.
Dobbins vs. McNamara, 113 Ind. 54.

Plaintiff in error has pursued her only remedy for relief under the facts of the case.

Bruer v. Osgood, 154 Ind. 375.
Emerick vs. Miller, 159 Ind. 317, 328
Walker vs Robbins, 14 Howard 584, 14 L. Ed. 552.

ARGUMENT.

1. THE FEDERAL QUESTION.

It is charged in the fifth assignment of error (Printed Record, p. 108) that in affirming the judgment of the Superior Court of Vanderburgh County, sustaining the demurrer to the fourth paragraph of the amended complaint, holding that said paragraph did not state facts sufficient to constitute a cause of action; the Supreme Court of the State of Indiana.

1. Withheld from plaintiff in error the rights given to her by the XIV Amendment of the Constitution of the United States and by the Constitution of the State of Indiana, each of which provide that no one shall be deprived of life, liberty or property without due process of law. The allegations set out in the fourth paragraph of the complaint must be taken as true for the purpose of demurrer. Those allegations are set out in Printed Record at pages 17, 18, 19 and 20. The facts there stated show conclusively that by means of a false return of a summons and without notice to the plaintiff in error or without her knowledge her property was sold. This certainly is depriving her of her property without due process of law. Her property was taken from her without an opportunity of being heard in defense of her rights, a proceeding unwarranted by the laws of any civilized country and in violation of every principle of natural justice.

2. In the first, second, third, fourth, and sixth assignments of error, (Printed Record p. 107, 108) it is charged that the Supreme Court of the State

of Indiana, erred in affirming the judgment of the Superior Court of Vanderburgh County in favor of defendant in error and against plaintiff in error. The judgment of said court raises the same federal questions as those raised by the sustaining of the demurrer to the fourth paragraph of the complaint. By said judgment this plaintiff in error was deprived of her property without due process of law and contrary to the XIV Amendment to the Constitution of the United States.

DUE PROCESS OF LAW.

It has been held by this court on each and every occasion that the question came before it for decision that a judgment in order to be valid and binding on the party against whom it is rendered must have been rendered under due process of law. Just what constitutes due process of law was succinctly stated in Pennoyer v. Neff, 95 U. S. 714, where this court said, "Due process of law implies a tribunal of competent jurisdiction, and a sufficient service on the defendant, or an appearance on his part, to render him amenable to that jurisdiction." There must be two things in order to fulfill this requirement;

(1) A tribunal of competent jurisdiction and (2) a sufficient service on defendant, or an appearance on his part. In this case the first requirement was fulfilled but not the second. The Superior Court of Vanderburgh County, possessed competent jurisdiction, had proper steps been taken to bring plaintiff in error into the case. The failure to do so renders the judgment void. There was no service on the then defendant, now plaintiff in error neither was there any appearance on her part. She had absolutely no notice to appear and defend.

JURISDICTION.

Jurisdiction is twofold (1) of the subject matter (2) of the person. If either is wanting there is no jurisdiction. Jurisdiction of the person can be acquired only by service of process on the party, by his apearance or by other methods fixed by statutes. In this State process must be personally served on minors if residents of the State or by publication if non-residents.

The plaintiff at the time of the filing of the foreclosure proceedings was twelve years of age, and a resident of the State of Indana, but not a resident of Vanderburgh County. Personal service was necessary.

There was no personal service therefore the trial court never acquired jurisdiction of this plaintiff in error and the judgment rendered in the foreclosure proceedings is a nullity.

REVIEW OF DECISION OF STATE COURTS

A judgment of a state court rendered without jurisdiction is always open to review on a writ of error sued out to the Supreme Court of the United States. This court can examine into the records, including the evidence of the state court to determine whether or not there was jurisdiction and whether the general finding of the facts against one party necessarily involves the decision of questions of law bearing upon a federal right claimed by such party in the state court. The Supreme Court is not bound either by the findings or the rulings in the State Court.

In this case the Supreme Court of the United States can and should examine all of the record including the evidence to determine whether plain-

tiff in error has been deprived of her property without due process of law and if they find from such examination that she had not been served with process they should reverse the decision of the Supreme Court of the State of Indiana.

Both the Supreme Court of the State of Indiana and the Superior Court of Vanderburgh County, held that the return of the Sheriff of Vanderburgh County, showing personal service could not be impeached except by proof of fraud on the part of the plaintiff to the foreclosure proceedings or their attorneys or that at the time said false return was presented to the court they had actual knowledge of its falsity. Their decision admitted that there was no service in fact, but they were bound by the return of the sheriff.

This holding was error for the great weight of modern authority is that the return of an officer of service of process may be impeached and recitals in the judgment will not correct a false return.

In holding the return conclusive, the equity of redemption in the plaintiff in error was cut off. This equity is a favored right and courts will examine very closely into any judgment, the effect of which is to either impair or abrogate this right. This court has held that "Parties interested in the premises who were not served with process, are not bound by a decree of foreclosure of mortgage thereon, and may redeem from the sale thereunder, the same as if no decree had been made." The plaintiff in error not having been served with process and being interested in the premises is asking for the right above stated, the right to redeem under the sale of the mortgaged premises. She filed this proceeding within the time fixed by the statutes of the State of Indiana, that is

within two years after she became of age. The county and State courts have refused her the right to redeem thus depriving her of her property without due process of law.

REMEDY.

The correct remedy for relief against judgments that have been wrongfully obtained, is a bill in Equity. Equity will grant relief where law is powerless to do so. Equity will enjoin or vacate a judgment in an action where the defendant had no legal notice, the trial court assuming jurisdiction on the strength of a false return made by the sheriff or other officer in the service of process. In this case the trial court assumed jurisdiction upon the false return of the Sheriff of Vanderburgh County, Indiana. Judgment was rendered against her and her property sold. This is a wrong that can be righted in a court of equity only. Law is powerless to afford a remedy. Plaintiff in error pursued her only remedy by filing her bill in equity and praying for equitable relief.

EVIDENCE.

Without trespassing too much upon the court's time, we desire briefly to call its attention to the evidence in this case.

The defendant in error introduced no evidence. The plaintiff in error introduced all the evidence at the trial.

The plaintiff in error in June, 1892, a child under the age of nine years, was taken to Haubstadt, Gibson County, State of Indiana, to live with relatives. She attended a parochial school in that town until 1897, and during the month of February, 1896 was regular in her attendance and

not absent from school a single day. The pretended summons was issued on February 20, 1896 and returned as served on that day. Printed Rec. p. 64. The 20th day of February, 1896, was on Thursday, a school day.

The plaintiff in error was not in Vanderburgh County, during February 1896, or during the winter of 1895 and 1896. Plaintiff in error's testimony is found in printed record, pages 64, 73.

The testimony of the plaintiff in error is supported and sustained by Sister Beatrice, the teacher in charge of the school and Rev. Bernard Ewers, who were wholly disinterested witnesses. Printed Rec., p. 76, P. R. Page 79.

The witness, Henry R. Scott, whose testimony appears in Printed Rec. Pages 54-62, was the Deputy Sheriff of Vanderburgh County, Indiana and made the return of the pretended summons. His entire testimony shows that he had a very indistinct recollection of what he did, to such an extent that one would be justified in doubting that he did anything with the summons save and except to make the return thereof. Witness Scott served summons he stated according to the directions received from Judge Peter Maier. Printed Rec. P. 61, Q. and A. 104.

Judge Maier was the attorney of record for the Plaintiff in the foreclosure proceedings and testified, Printed Rec. P. 87, "I don't know as I directed him, (Deputy Sheriff Scott). I told him to find out where the girl was; he promised he would make proper service and when he returned it I took it for granted he had done so."

Witness Scott testified that he served the summons on Outer Division Street in the City of Evansville, Indiana. Mrs. Clara Sielerman, who

in 1896 was the widow of Joseph Juchert and who were the parents of several children bearing the name of Juchert, lived at No. 2202 Outer Division Street and had been living at that place for a period of fifteen years. She testified that plaintiff in error had never visited her at the Division Street home. Printed Rec. P. 74 to 76. In this she corroborates plaintiff in error's testimony at page 69 and page 72.

The learned Judge who tried the case, was fully convinced that no summons had ever been served on plaintiff in error in the foreclosure proceedings, and so expressed himself at the close of the evidence, yet as plaintiff in error was obliged under the decisions of the Supreme and Appellate Courts of Indiana, to show fraud on the part of the plaintiff in the foreclosure proceedings, or in some manner to connect her with same, he was compelled to render judgment against the plaintiff in error and subsequently overrule her motion for a new trial.

CONCLUSION.

We respectfully submit that under the law as laid down by this court in all its decisions where a similar question was involved, the Supreme Court of the State of Indiana, erred in affirming the judgment of the Superior Court of Vanderburgh County, in sustaining the demurrer to the Amended Fourth paragraph of the complaint; and also erred in holding that it was incumbent on the part of the plaintiff in error to prove that the plaintiff in the foreclosure proceedings was guilty, directly or indirectly of fraud in procuring the false return, or at the time of the trial knew of its falsity.

True it is that the sanctity of judgments should be preserved, yet judgments however sacred should not be upheld at the price of depriving citizens, not to mention minors, the favorites of the law, of constitutional and natural rights; rights recognized by every civilized nation of the earth.

In the words of the Supreme Court of Washington in Johnson v. Gregory, 29 Pac. 831, we say:

> "No doubt hardships will arise under such a construction of the law and public policy demands that credence should be given to the record, but prudential considerations of public policy must not be carried to the extent of establishing conclusive presumptions, which destroy the citizens constitutional right to his day in court.
>
> "No greater hardship could certainly be conceived of than to deprive a person of his property without due process of law, and no principle is more antagonistic to our form of government and system of laws, or to the provision of our constitution."

An action against the sheriff is inadequate, incomplete and inequitable and in this instance no remedy at all to the plaintiff in error.

We humbly submit that because of the foregoing errors assigned and manifest other errors, the Decision of the Supreme Court of the State of Indiana in this cause, should be reversed and plaintiff in error be granted the relief as prayed for in her petition.

Respectfully submitted.

GEORGE K. DENTON,

Attorney for Plaintiff in Error

INDEX.

SUBJECT INDEX.

	Page
Statement of the case	1-7
Analysis of pleadings	2-6
Trial and judgment	6, 7
Motion for new trial	7
Brief of argument	7-33
Jurisdictional question—argument on	7-24
Substantive law—argument on	24-33
Second and sixth assignments	24, 25
Third assignment	26
Fourth assignment	27, 28
Fifth assignment	28-33

CASES CITED.

Allen v. Arguimbau, 198 U. S., 149	12
Ansbro v. U. S., 159 U. S., 695	21
Antoni v. Greenhow, 107 U. S., 769	21
Brinkmeier v. Mo. Pac. Ry. Co., 224 U. S, 268	24
Burt v. Smith, 203 U. S., 129	13
Butler v. Gage, 138 U. S., 52	11
Capital Bank v. Cadiz Bank, 172 U. S., 425	8, 9, 18, 25, 26
Chapin v. Fye, 179 U. S., 127	10
Clark v. Penn., 128 U. S., 395	11
Cornell v. Green, 163 U. S., 75	21
Consol. Tp. Co. v. N. & O. V. Ry. Co., 228 U. S., 596	21, 26
Cosmopolitan Mining Co. v. Walsh, 193 U. S., 460	8, 15, 25, 26
First Nat. Bank v. Littlefield, 226 U. S., 110	25

French v. Taylor, 199 U. S., 274..... 13
Garr, Scott & Co. v. Shannon, 223 U. S., 468.... 24
Home for Incurables v. City of New York, 187 U. S., 155..... 12
Iowa Central Ry. Co. v. Iowa, 160 U. S., 389.. 20, 28, 32, 33
Jacobi v. Alabama, 187 U. S., 133..... 13
Johnson v. N. Y. Life Ins. Co., 187 U. S., 491.. 9, 11
Kansas Endow. Assn. v. Kansas, 120 U. S, 103.. 13
Kring v. Missouri, 107 U. S., 221..... 21
Leeper v. Texas, 139 U. S., 462.....11, 13, 32
Ludeling v. Chaffe, 143 U. S., 301..... 28
Manning v. French, 133 U. S., 186..... 11
Marvin v. Trout, 199 U. S., 212..... 8, 12
McQuade v. Trenton, 172 U. S., 636.....18, 25, 26
Mutual Life Ins. Co. v. McGraw, 188 U. S., 291.. 8, 10
Penn. R. Co. v. Hughes, 191 U. S., 477..... 24
Rawlins v. Georgia, 201 U. S., 638..... 14
San Francisco v. Scott, 111 U. S., 708..... 24
Sayward v. Denny, 158 U. S., 180.....10, 24, 28
Seaboard Air Line Ry. Co. v. Duvall, 225 U. S., 477..... 8, 12
Simmerman v. Nebraska, 116 U. S., 94..... 11
Standard Oil Co. of Indiana v. Missouri, 224 U. S., 270..... 24
Vandalia R. R. Co. v. South Bend, 207 U. S., 359 32
Warfield v. Chaffe, 91 U. S., 690..... 11
Wood v. Chesborough, 228 U. S., 672..... 21, 26
York v. Texas, 137 U. S., 15..... 21
Zadig v. Baldwin, 166 U. S., 485..... 10

STATE CONSTITUTION AND STATUTES.

Bill of Rights, Sec. 12..... 13
Indiana statutes..... 19, 20

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1913.

FRANCIS A. MIEDREICH,
Plaintiff In Error,
vs.
CONSTANZE LAUENSTEIN.
No. 209.

BRIEF FOR DEFENDANT IN ERROR.

Not being satisfied with the statement prepared for the plaintiff in error we submit the following:

Statement of the Case.

In the brief for plaintiff in error, near the foot of page six it is said that the cause proceeded to trial on the fifth paragraph of the amended complaint. We have not been able to find in the record of the trial court any statement or recital that the trial was limited to any particular paragraph. In the Corrected Record, near the foot of page three, the Supreme Court of Indiana, after discussing the demurrer to the fourth paragraph of complaint, said:

> The cause went to trial on two other paragraphs of complaint explicitly charging fraud on the part of plaintiffs and their attorneys in the

> original cause in procuring service to be made by some person whose name and identity is to the appellant unknown, by fraudulently representing to the sheriff that such person was the appellant, and thus procuring a false return to be made, by which the court was imposed upon and the judgment rendered.

It would seem, therefore, that the case was tried on two paragraphs charging fraud on the plaintiff and attorneys in the original cause, etc. As the judgment of the trial court did not specify any particular paragraph of complaint (Rec. 91) we feel obliged to make an abstract of all the pleadings, as follows:

(a) Plaintiff in error, the daughter and only heir of John Juchert and Rosa C. Juchert, both deceased, brought this action in the Superior Court of Vanderburgh County, Indiana at the March Term, 1906. She was born June 8, 1883, and attained her majority June, 1904. She alleges that on June 4, 1892, she became the owner in fee simple by a warranty deed of lot 24, Block 11, Kazar's Division, in the City of Evansville, Vanderburgh County, subject to the life estate of her mother, who departed this life in October, 1900. When plaintiff in error became the owner of lot 24 Else Lauenstein held two mortgages thereon and on four other lots in the City of Evansville, the two mortgages aggregating $1500. All the property was worth $5000, and is now worth $6000.

(b) In May, 1895, Francis M. Harned brought an action in the Superior Court of Vanderburgh County to foreclose a tax lien on lot 24, and in November, 1895, the said Else Lauenstein brought an action in that court to foreclose her two mortgages on all of the lots. Subsequently the two cases were consolidated. In each case

it was sought to make John Juchert, Rosa C. Juchert, and their daughter, Francis A. Juchert (plaintiff in error here) parties defendant to answer to their interests in the property. At that time plaintiff in error, who was twelve years of age, was not a resident of Vanderburgh County, but was a resident of Gibson County, and had been for many years prior thereto. She was not summoned to appear and defend her interests, had no knowledge of the pendency of the action, did not waive the service of process, nor did anyone for her, or in her behalf, or by her consent, waive service of process or enter appearance for her.

Up to this point the five paragraphs of complaint (Rec. 8-26) seem to be alike.

(c) The first and second paragraphs (Rec. 9, 11) contain this averment:

> This plaintiff further says that the said Else Lauenstein and Frances M. Harned or their attorneys wrongfully conspired and confederated together to deprive her of her interests in said real estate and caused this Court trying said cause, to be wrongfully imposed upon by having the sheriff of Vanderburgh County to wrongfully and fraudulently make a false return on the pretended summons alleging that this plaintiff has been served with process; a particular statement of which facts cannot be given by this plaintiff because they are within the peculiar knowledge of said parties.

The third paragraph does not contain any charge of fraud or conspiracy on the part of the two plaintiffs or their attorneys (Rec. 13-15). Neither does the fourth paragraph contain such averments (Rec. 17-20).

The fifth paragraph (Rec. 34) contains this averment:

> That plaintiff further says that the said Else Lauenstein and Francis N. Harned or their attorneys carelessly, negligently, wrongfully and fraudulently directed the summons in this consolidated cause to be issued to the sheriff of Vanderburgh County, Indiana, whereas in truth and in fact this plaintiff was then and had been for a long time prior thereto a bona-fide resident of Gibson County, Indiana, and was not then within Vanderburgh County and had not been for a long time prior thereto.

This fifth paragraph then alleges that the two plaintiffs and their attorneys,—

> carelessly, negligently, wrongfully, and fraudulently directed the Sheriff of Vanderburgh County, then and there, to serve pretended summons upon some person whose name and identity is to the plaintiff unknown, and carelessly, and fraudulently represented that said person was this plaintiff, and said sheriff of Vanderburgh County, by reason of said wrongful and fraudulent conduct of plaintiffs or their attorneys then and there wrongfully served said pretended summons upon said person whose name and identity is to this plaintiff unknown, and thereupon said sheriff then and there by reason of said wrongful and fradulent conduct of the plaintiffs or their attorneys wrongfully endorsed in writing upon the summons, "served upon the within Frances Juchert, this plaintiff, by reading;" whereas in truth and in fact the said sheriff did not then, nor at any time serve said summons or any other summons, upon this plaintiff, etc.

For the whole lengthy averment on this subject in the fifth paragraph, see Rec. 24.

(d) Each paragraph alleges that at the time the summons was so returned by the sheriff the plaintiff in error was not amenable to the jurisdiction of the sheriff of Vanderburgh County, and in all but the fifth paragraph it is averred that the court, being falsely advised in the premises, appointed, at the instance of plaintiff's attorneys, Mr. W. W. Ireland, an attorney of the Superior Court, as her guardian *ad litem* to answer as to her interests by requiring proof of the allegations of the complaints (Rec. 9, 12, 14, 18, and foot of 24) but it is not alleged whether or not he filed such answer, though the evidence shows that he did file it (Rec. 50).

(e) Each paragraph alleges that such proceedings were had in said causes as to culminate in a judgment and decree against the adult defendants, and against her without opportunity of being heard (Rec. 9, 12, 14, 18, 25).

An order of sale was issued thereon and sale was made of all the property, including lot 24 now in controversy here. All the property was bought at the sheriff's sale by the said Else Lauenstein for $1988. The sheriff's certificates of sale were assigned to Frederick Lauenstein who then obtained a sheriff's deed. Defendant in error is the sole devisee of the said Frederick Lauenstein, lately deceased (Rec., foot of p. 9, 12, 14, 18, 25).

(f) In the third paragraph (Rec. 15) it is averred of plaintiff in error—

> That she did not know the facts herein alleged, nor that the said first described real estate had been conveyed to her, nor that any attempt had been made to make her a party to said foreclosure proceedings until within the past six (6) weeks.

The same averment is made in the fourth paragraph (Rec. 19) but it is not found in the first, second, and fifth paragraphs.

(g) Each paragraph contains an averment as to the rental value of the property here in controversy.

(h) The prayers for relief vary somewhat. In the first and second paragraphs the prayers are the same in substance, for vacating the judgment, quieting the judgment, etc. (Rec. 10, 13.) The prayer in the third paragraph is for an accounting as to the rents and profits and that plaintiff be permitted to redeem (Rec. 15). The prayer in the fourth paragraph is the same (Rec. 2) while that in the fifth paragraph (Rec. 26) is for the vacating of the judgment in the foreclosure case, subject to the payment of the mortgages and interest, and that the title of the plaintiff in error to the lot in controversy here be forever quieted and set at rest. It also prays for an accounting of the rents collected and the amounts expended in behalf of the property, etc. (Rec. 26).

(i) Demurrers were filed to each of these paragraphs (Rec. 16, 21, 26). They were sustained to the fourth paragraph (Rec. 21) but overruled as to the others. Answers in general denial were filed (Rec. 22, 27). The case was tried June 14, 1907, before the learned Judge of the Superior Court (Rec. 32) and much record evidence, as well as the oral testimony of six witnesses (Rec. 32, 64-79, 86) and the deposition of one witness (Rec. 54) was introduced (Rec. 32-91).

June 22, 1907, a judgment was entered for the defendant and "that the plaintiff take nothing by her complaint and that defendant recover her costs herein (Rec. 91)".

Two days later the plaintiff filed her motion for a new trial (Rec. 2) alleging the following reasons:

> 1. The decision of the court is not sustained by sufficient [evidence].
> 2. The decision of the court is contrary to the evidence.
> 3. That the decision of the court is contrary to law.
> 4. The decision of the court is contrary to the law and the evidence.

The court overruled the motion for new trial (Rec. 91) and the case was taken to the Supreme Court of the State on appeal (Rec. 94-97).

That court, January 15, 1909, affirmed the judgment of the court below (Rec. 98) in an opinion of which a purported copy is found on Rec. 98-100, but that purported copy is so full of apparent blemishes and errors, the handiwork of the copyist evidently, that the parties took the true opinion, as well as the opinion on the petition for re-hearing, from the official report of the case, 172 Indiana, 140, and had them printed as parts of the record by stipulation. See corrected Record, pp. 1-5.

BRIEF OF ARGUMENT

No Federal question is raised or presented by the record.

Our specific points in support of that proposition are as follows:

1. *The Federal question was not specially set up or claimed in the pleadings, or in objections to evidence, or*

in exceptions, or request for findings, and the record does not show, either by the words used or by clear and necessary intendment therefrom, that the right was specifically claimed or put in issue in any manner.

The five paragraphs of complaint, as well as the record down to the filing of the opinion, may be searched from end to end without finding any such issue or claim of right or even an indirect allusion to it.

It seems idle to cite authorities to this court in support of the above proposition of law, but we will cite these cases.

> *Capital Bank v. Cadiz Bank,* 172 U. S., 425, 430;
> *Marvin v. Trout,* 199 U. S., 212, 222, 223;
> *Mutual Life Ins. Co. v. McGrew,* 188 U. S., 291, 310;
> *Seaboard Air Line Ry. Co. v. Duvall,* 225 U. S., 477, 487;
> *Cosmopolitan Mining Co. v. Walsh,* 193 U. S., 460, 465.

2. *The motion for a new trial does not raise or present a Federal question.*

That motion presents the question of the correctness of the judgment on the evidence and the law. (Rec. 92.) There is no assertion or claim in it that the judgment of the trial court was repugnant to the Fourteenth Amendment or to any other constitutional provision. As the Federal question was not raised by the pleadings, or by the motion for new trial, it was not presented to or passed upon by the trial court. The question could have been asserted by that motion.

> *Johnson v. New York Life Ins. Co.,* 187 U. S., 491, 495.

As was said in *Capital Bank v. Cadiz Bank*, 172 U. S., 425, 431, the motion for new trial pursued a common formula, and one of the grounds assigned was that the judgment was "contrary to law", but this cannot be construed as having a single meaning and distinctly referring to the denial of a claimed right of a Federal nature.

3. *The Federal question was not raised by assignment of error in the Supreme Court of the State as it might have been.*

The assignment of errors (Rec. 95) is:

> 1. The court erred in sustaining appellees demurrer to the fourth paragraph of the amended complaint of the appellant.
> 2. The court erred in overruling appellants motion for a new trial.

There was a clear failure to raise the Federal question by this assignment, because, *first*, there is no appropriate language in the assignment, and, *second*, the motion for a new trial referred to does not raise it. (Rec. 92.)

The question could have been raised by an assignment of error in the court below.

> *Johnson v. N. Y. Life Ins. Co.*, 187 U. S., 491, 495.

4. *It is not sufficient to present the Federal question by brief or by oral argument in the State court.*

The only allusion to the Federal question in the opinions of the court below is in this language:

> Both parties have treated this action as one arising under the provisions of Article 14 of the Federal Constitution, as presenting the question of due process of law, and rights guaranteed by the state and Federal constitutions.

P. 2 of stipulation.

The plain meaning of that language is that, either by brief or by oral argument in the State Supreme Court, counsel treated the action as arising under the provisions of the 14th amendment, and the rights guaranteed by the State and Federal constitutions as to due process of law. The briefs are not in this record.

It is not sufficient to raise the constitutional questions by brief or oral argument in the Supreme Court of the State.

> *Zadig v. Baldwin,* 166 U. S., 485;
> *Sayward v. Denny,* 158 U. S., 180;
> *Chapin v. Fye,* 179 U. S., 127;
> *Mutual Life Ins. Co. v. McGrew,* 188 U. S., 291, 308.

5. *Presenting the Federal question for the first time by petition for a re-hearing to the Supreme Court of the State would not have availed the plaintiff in error.*

The petition for re-hearing is not in the record, although it is disclosed that one was filed and we have the opinion of the court below in passing upon it. (P. 4, stipulation.) That opinion does not consider, treat, or decide any constitutional question. So, even if the Federal question had been presented by that petition for the first time, it would not avail plaintiff in error here.

> *Mutual Life Ins. Co. v. McGrew,* 188 U. S., 291, 308.

6. *Nor is it sufficient to raise the Federal question for the first time in the petition for the writ of error.*

The petition for the writ of error (Rec. 102) undertakes to raise the Federal question by quoting this language from the opinion of the Supreme Court:

> Both parties have treated this action as one arising under the provisions of Article 14 of the Federal Constitution, as presenting the question of due process of law, and rights guaranteed by the State and Federal Constitutions.

The petition then uses argumentative language, the purpose of which is to assert that plaintiff in error had been deprived of her property rights without due process of law, contrary to the 14th amendment. It ends with a reference to the assignment of errors filed with it. (Rec. 103, 107.)

Concerning this petition we submit:

(a) That it is not so framed as to raise the Federal question, for it is argumentative in character and not specific.

(b) Even if it should be held to state a Federal question, it cannot avail plaintiff in error to raise it for the first time in that petition.

Johnson v. N. Y. Life Ins. Co., 187 U. S., 491;
Simmerman v. Nebraska, 116 U. S., 94.

(c) We submit that the petition for the allowance of the writ of error is not part of the record. This court can act only on that record. As the petition is not a part of the record it must be disregarded here.

Leeper v. Texas, 139 U. S., 462, 467;
Warfield v. Chaffe, 91 U. S., 690, 692;
Clark v. Penn., 128 U. S., 395, 397;
Manning v. French, 133 U. S., 186, 192, 193;
Butler v. Gage, 138 U. S., 52, 56.

7. The statement of the court below in allowing the writ of error does not aid plaintiff in error in the attempt to present the Federal question.

In allowing the writ (Rec. 103) the court below said:

> And upon consideration of the said petition, this court desiring to give petitioner an opportunity to test in the Supreme Court of the United States the questions therein presented, it is ordered by this court that a writ of error be allowed, as prayed, . . .

The court below seems to have been careful to avoid saying that a Federal question, or what Federal question, had been presented and passed upon by that court. But if that court, in allowing the writ of error, had made the clear and positive statement that the Federal question had been presented and passed upon, it would not be a part of this record, as we have shown, and it would not be sufficient to give this court jurisdiction, or authorize it to determine a Federal question that does not appear from this record to have been brought to the attention of the State court and decided adversely to plaintiff in error.

Seaboard Air Line Ry. Co. v. Duvall, 225 U. S., 477, 481;

Home for Incurables v. City of New York, 187 U. S., 155;

Allen v. Arguimbau, 198 U. S., 149, 156;

Marvin v. Trout, 199 U. S., 212, 217, 223, 227.

The case last cited seems to be conclusive of the case at bar. Please note the certificate on page 217 of the report. The certificate here is even more general.

8. *If any constitutional questions were involved in this litigation below it would seem that they must have rested on the Constitution of the State of Indiana.*

We copy from section 12 of the Indiana Bill of Rights:

> All courts shall be open; and every man, for injuries done to him in his person, property, or reputation shall have remedy by due course of law.

If this record shows that the court below passed upon any constitutional question, a proposition that we would challenge earnestly, it would seem to be a just and fair inference that it passed only upon the constitutional provision of its own State. That would be the natural thing to do. Indeed, it would appear to be an inevitable conclusion, in the absence of language to the contrary, that the court below passed upon the Constitution of its own State and not upon the Federal Constitution.

Kansas Endow. Assn. v. Kansas, 120 U. S., 103;
Jacobi v. Alabama, 187 U. S., 133, 135.

We have seen that by the Indiana Constitution every person is entitled to have "remedy by due course of law." If the court below passed on that constitutional question it did not exceed its powers and functions under the Constitution of the State, nor in that way deny the plaintiff in error due process of law. It was for the local courts to deal with local questions.

Burt v. Smith, 203 U. S., 129, 135;
French v. Taylor, 199 U. S., 274, 277;
Leeper v. Texas, 139 U. S., 462, 467.

Where the state constitution and laws, as construed by the state court, are consistent with the Fourteenth Amendment, this court can go no further, and will not revise the decision of the state court as to whether the local laws have been complied with.

Rawlins v. Georgia, 201 U. S., 638, 639.

In the course of the opinion Mr. Justice Holmes said:

> At the argument before us the not uncommon misconception seemed to prevail that the requirement of due process of law took up the special provisions of the state constitution and laws into the Fourteenth Amendment for the purposes of the case, so that this court would revise the decisions of the state court that the local provisions had been complied with. This is a mistake. If the state constitution and laws as construed by the state court are consistent with the Fourteenth Amendment, we can go no further. The only question for us is, whether a State could authorize the course of proceedings adopted, if that course were prescribed by its constitution in express terms.

The words "due course of law" in the Indiana Constitution are equivalent, as we submit, to the words "due process of law" in the Federal constitution.

If the case turns on the legality of the service of the summons it does not require the construction of the Federal Constitution, but simply calls for the construction of the constitution and laws of the State, or the application of the principles of general law, and no Federal question is presented.

That doctrine is stated and applied in *Cosmopolitan Mining Co. v. Walsh,* 193 U. S., 460, 471, 472, when the question was as to the legality of service of summons upon an alleged agent of a corporation. Judgments were entered in the original cases in the State Court, and the attached property was sold to Marsh as trustee for the several judgment creditors. Marsh received a certificate of purchase and afterwards assigned it to Osborn, to whom a sheriff's deed was executed and delivered. Osborn conveyed the property to Walsh (Pages 461-463).

Afterwards Walsh brought an action in the State Court against the mining company to quiet his title to the property that he had thus acquired, and he pleaded the proceedings in the previous cases in the State Court. He recovered judgment quieting the titles (Pages 463, 464). The mining company then brought its action in the Circuit Court of the United States for the District of Colorado to recover possession of the real property sold under the judgments in the actions in the State Court. The complaint attacked the validity of those judgments because, prior to the service made upon the agent, Jardine, the mining company was not doing business in Colorado, and in those actions no service of process had been made upon it, hence, the Colorado courts acted without jurisdiction and consequently "the plaintiff has been and is being deprived of its property, * * * without notice, hearing, opportunity to be heard, or due process of law, and in violation of the Fourteenth Amendment of the Constitution of the United States" (Pages 464, 465).

On the trial in the Circuit Court of the United States the mining company introduced documentary evidence

exhibiting its title to the property, and the defendant introduced a certified copy of the statutory designation of Jardine as agent of the mining company, the judgment records in the various actions relied upon, tax deeds covering two of the mill sites enumerated in the complaint, and oral testimony. The mining company objected to that evidence for four reasons, the third one being that, as the service of process in the county court actions had been upon Jardine in another county than the one mentioned in the statutory appointment as his residence, the service was void (Page 465).

The offer of the judgment record in the action to quiet title was also objected to because it was not shown that the company was doing business in Colorado at the time of service of summons on Jardine and, therefore, the service on him was void (Pages 465, 466). The records were admitted in evidence. The judgment records in the county court actions were admitted on the ground that it sufficiently appeared from the records of the mining company that it was doing business in Colorado at the time the actions were brought (Page 466). Other evidence, both record and oral, was offered by both parties, some of which was allowed to be introduced, while some of it was not admitted (Pages 466, 467).

This brief outline of the case shows that there was a sharp controversy in law and in evidence about the validity of the service of summons on Jardine. The opinion of the court was written by Mr. Justice White, who said, p. 471:

> When the proceedings at the trial are taken into view it is clear that the contentions which were urged did not require the construction of the Con-

> stitution of the United States, but simply called for the construction of the Constitution and laws of the State of Colorado or the application of the principles of general law.

Again, it was said by Mr. Justice White, p. 472:

> The primary and fundamental contention of the mining company was therefore this and nothing more: that under the circumstances disclosed the service upon the statutory agent was unauthorized either by the law of Colorado or the principles of general law; and hence that it had not lost its title to the property.

The learned Justice then considered and discussed that contention and in concluding the opinion said:

> The rulings of the court below as to the admissibility of evidence and its final direction of a verdict involved necessarily deciding that the service upon the agent was valid by the laws of Colorado, or the principles of general law applicable thereto, and its action in so doing in no wise involved the construction or application of any provision of the Constitution of the United States.

We submit that, in all essentials, that case is similar to the case at bar, and that the rules of law laid down in that opinion are applicable here. The writ of error was dismissed in that case, and we submit that the like action should be taken here.

9. *Only questions of fact and local or general law are involved here, and the decision of the court below is not reviewable on writ of error to this court.*

1. If it should be contended that it appears on the face of the record, either by express language to that effect or by necessary intendment, that the plaintiff in error was denied due process of law because the sheriff, who is an officer created and recognized by the laws of the State, did not perform his duties lawfully in the service of the summons, we would answer that only questions of fact and local law are involved and their determination by the lower courts is not reviewable on writ of error. Therefore this court has no jurisdiction.

> *Capital Bank v. Cadiz Bank*, 172 U. S., 425, 430; *McQuade v. Trenton*, 172 U. S., 636.

The judgment of the trial court (Rec. 91) shows that the cause was heard and submitted to the court for trial without the intervention of the jury.

> And the court having heard the evidence and being fully advised in the premises finds for the defendant on the plaintiff's complaint. It is therefore considered by the court that the plaintiff take nothing by her complaint and that defendant recover her costs herein.

This judgment can mean only that it was an adjudication based on the facts and the law as applied to the allegations in the complaint. This judgment was general and not limited in any manner. The opinions of the court below show that it considered no other questions than those presented to and disposed of by the trial court. Those opinions deal with such questions only, and it was unnecessary to do otherwise.

2. This brings us to the statutes relating to the procedure in the foreclosure case. By Sec. 314, Rev. Stat., Indiana (1881), it is provided among other things that:

> The summons shall be issued by the clerk, under the seal of the court, and directed to the sheriff, and shall notify the defendant of the action commenced, the parties thereto, and the court where pending.

By the next section it is provided in part that:

> The summons shall be served, either personally on the defendant, or by leaving a copy thereof at his usual or last place of residence.

The same statutes are to be found in 1 Burn's Ann. Stat., pp. 169, 170.

Surely it cannot be contended successfully that the State had not the right or power under the Federal Constitution to authorize or enact such legislation.

Both courts below held, *after considering the evidence*, that the plaintiff in error had been personally served with process by the sheriff. No other conclusion can be drawn from the judgment rendered by the trial court or from the opinions of the Supreme Court, as we submit.

We now ask attention to the Indiana statutes concerning the appointment of a guardian *ad litem*. Section 258, Rev. Stat., Indiana (1881), provides that,—

> An infant defendant shall appear and defend by guardian appointed by the court or chosen by such infant with the consent of the court.
>
> Also in 1 Burns' Ann. Stat., p. 129.

Chapter 8 of the Revised Statutes, Indiana (1881), relates to the guardianship of infants. Section 8, Article 1, of that chapter, is as follows:

> All courts shall have power to appoint a guardian *ad litem*, to defend the interests of any minor impleaded in any suit; and to permit any person, as next friend, to prosecute any suit in any minor's behalf.

The same statute is in 1 Burns' Ann. Stat., p. 1337.

It appears clearly on the face of the record that this plaintiff in error had been served by summons; that the trial court appointed a guardian *ad litem* to appear and defend her and her interests; and that he filed an answer in her behalf (Rec. 50) denying each and every allegation contained in the complaint, asking the court to require strict proof thereof and that the interests of the infant defendant be in all things protected. The guardian *ad litem* did not exceed his powers in the slightest degree, nor did the trial court exceed its powers in appointing him.

"But it is clear that the Fourteenth Amendment," said Mr. Justice White in *Iowa Central Ry. Co. v. Iowa*, 160 U. S., 389, 393, "in no way undertakes to control the power of a state to determine by what process legal rights may be asserted or legal obligations be enforced, provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided."

The construction of pleadings, and all questions of evidence and practice, fall within the term "procedure."

This court has held that the term includes in its meaning whatever is embraced in pleadings, evidence, and practice.

Kring v. Missouri, 107 U. S., 221, 231.

The state has full power over remedies and procedure in its own court, and it can make any order it pleases in respect thereto, provided the substance of right is secured without unreasonable burden to parties and litigants.

Antoni v. Greenhow, 107 U. S., 769;
York v. Texas, 137 U. S., 15, 20.

We submit that there is nothing in the State Constitution or Statutes that is out of harmony with the above rulings or with any part of the Fourteenth Amendment.

As the questions involved are of local or general law, broad enough to support the decision, this court will not consider the Federal question even had it been raised in and passed upon by the court below.

Consol. Tp. Co. v. N. & O. V. Ry. Co., 228 U. S., 596, 599;
Wood v. Chesborough, 228 U. S., 672, 677.

10. *The assignment of errors made for this court but filed in the court below at the time the petition for the allowance of the writ of error was filed cannot avail to import a Federal question, or any other, into the case which the record does not show to have been raised and passed on in the court below.*

The above is the statement of a clearly established rule.

Ansbro v. U. S., 159 U. S., 695, 697, 698;
Cornell v. Green, 163 U. S., 75, 80.

It follows that the first assignment of error here (Rec. 107) must fall because the record in the court below does not disclose that the Federal question was asserted, claimed, presented or passed upon in any way.

1. It is stated in that first assignment that the "Supreme Court of Indiana erred in holding that there was due process of law within the meaning of Article Fourteen of the Constitution of the United States with reference to the giving of notice of [to] the plaintiff in error", etc. We submit that the court below did not pass upon that question, and we appeal to the opinions handed down by the court. We have not been able to find the slightest allusion to the Federal Constitution in those opinions, except the sentence already quoted in the first paragraph of the principal opinion, to the effect that both parties had treated the action as one arising under the provisions of Article Fourteen of the Federal Constitution, etc.

We submit, *first*, that the statement in the opinion referred to is not susceptible of such construction as will support the assignment here that the court below ruled on the constitutional question; and, *second*, that a careful examination of the two opinions will show that they dealt only with questions of procedure, with the sufficiency of the evidence introduced and considered in the trial court, and with the rights of the parties under the general law.

In the two concluding paragraphs of the principal opinion it is asserted that the only other error assigned is upon the overruling of the motion for a new trial, in which motion it was claimed that the judgment of the trial court was not sustained by sufficient evidence and was contrary to law. The court below then says that

the sole question presented upon that motion was whether appellant had been served with summons in the original case; that the evidence was conflicting; that the trial court found against the plaintiff on the evidence on the only question in the case; and that there was legal evidence supporting the finding. That opinion concludes as follows:

> We cannot disturb the decision upon the weight of the evidence in this character of action any more than in any other kind of adversary action.

2. In the first paragraph of the opinion on the petition for rehearing the court says that counsel urged that "we were in error in holding that the fourth paragraph of complaint is not based upon fraud upon the part of appellee's remote grantors in procuring a false return." This contention raised a question of procedure only and not a Federal question. The court below then discusses the fourth paragraph of complaint, adheres to its former ruling, and in the concluding paragraph the court states that it had again read the evidence in the case and found no evidence of knowledge on the part of appellees remote grantors, or her attorneys, of the fact that the sheriff's return was false.

3. We submit that these opinions clearly negative the assertion in the first assignment of error here that the court below held adversely to the plaintiff in error on the provisions of the Federal Constitution. On the contrary, the opinions show affirmatively that the court below decided the case against the plaintiff in error on the evidence and on questions of local or general law broad enough to sustain the judgment, and the effect was to deprive this court of jurisdiction.

Penn. R. Co. v. Hughes, 191 U. S., 477, 486;
San Francisco v. Scott, 111 U. S., 708;
Garr, Scott & Co. v. Shannon, 223 U. S., 468, 470;
Brinkmeier v. Mo. Pac. Ry. Co., 224, U. S., 268, 270;
Standard Oil Co. of Indiana v. Missouri, 224 U. S., 270, 280, 281;
Sayward v. Denny, 158 U. S., 180, 186.

Substantive Law.

If the court should reach the conclusion that the first assignment of error (Rec. 107) is well taken to the extent that there is in this record a Federal question, there will remain five other assignments to consider, and therefore we shall discuss them as briefly as may be.

I.

Second and Sixth Assignments.

As the second and sixth assignments seem to be the same in substance we shall treat them together. In effect they are that the court below erred in holding to be valid the judgment in the foreclosure case to which the plaintiff in error was a party, because no notice had been given her, no summons was served on her, she had no knowledge of the case, did not waive service of process, nor did anyone for her or by her consent waive service of process or enter appearance for her, and she had no opportunity of being heard in defense of her rights. We submit that the record shows that every question presented by the second and sixth assignments was bottomed

on the first, second, third and fifth paragraphs of complaint, and was testified about, both in oral and written evidence, on the trial of the case, and that the trial judge decided adversely to the plaintiff in error. For the evidence, see Rec. 32-91. For the judgment, motion for new trial, and ruling thereon, see Rec. 91, 92.

In the brief for plaintiff in error (p. 27) it is stated that the learned judge who tried the case was fully convinced that no summons had ever been served on plaintiff in error in the foreclosure proceedings and so expressed himself at the close of the evidence, etc. In response to this statement we will say that there is nothing of the kind in the record.

In the two opinions of the court below it appears clearly and explicitly that the court had read and considered the evidence and that, while the evidence was conflicting, there was legal evidence supporting the finding of the trial judge. In concluding the opinion on petition for re-hearing, the court below said:

> Upon the question of the sufficiency of the evidence to support the decision, we think it is fully supported.

We respectfully submit that this court will not revise the concurrent judgments of the two courts below on the evidence, and that the second and sixth assignments of error are not well taken.

First Nat. Bank v. Littlefield, 226 U. S., 110;
Cosmopolitan Min. Co. v. Walsh, 193 U. S., 460, 465-467, 471, 472;
Capital Bank v. Cadiz Bank, 172 U. S., 425, 427, 432, 433;
McQuade v. Trenton, 172 U. S., 636, 637, 639.

II.

Third Assignment.

This assignment (Rec. 107) is that the court below erred in holding that, upon a false return of the sheriff showing service of summons, the plaintiff in error was bound by subsequent proceedings, in the absence of any knowledge thereof, and that her only remedy was an action against the sheriff upon his bond for such false return.

1. The Supreme Court held in the principal opinion that the trial court had the right to rely and act upon the sheriff's return, which imported verity. The sheriff assumed the responsibility of seeing to it that he made the right service. If this were not true, as the court below well said, no litigant could ever know when his rights were adjudicated and set at rest and so, to the end that the party may be made whole, an action for a false return will lie. The court cited Indiana authorities that fully sustain its position.

2. This assignment presents a question either of local law or of general law and, therefore, this court will not review the decision of the state court.

Consol. Tp. Co. v. N. & O. V. Ry. Co., 228 U. S., 596, 599;

Capital Bank v. Cadiz Bank, 172 U. S., 425, 430;

McQuade v. Trenton, 172 U. S., 636;

Cosmopolitan Mining Co. v. Walsh, 193 U. S., 460, 471, 472;

Wood v. Chesborough, 228 U. S., 672, 677.

III.

Fourth Assignment.

This assignment (Rec. 107) is that the court below erred in holding that, in order to entitle the plaintiff in error to any relief from the judgment of foreclosure rendered on a false return of the sheriff showing service of process, it was necessary for her to show that the plaintiff in the foreclosure proceedings had actual knowledge of the false return or actually participated in it, and the assignment quotes the court below as saying: "The material thing is knowledge of the false return."

The principal opinion is based largely on the question of the sufficiency of the fourth paragraph of the complaint, and in the course of that opinion the court states that the allegations do not present a question of fraudulent conduct on the part of the appellee's predecessor in title or of her attorneys in procuring a false return, or participation in a fraud upon the court, which is an acknowledged ground of interference of an equity court, and Indiana cases are cited. The court then takes up the question at a little length and reaches the conclusion that the fourth paragraph of complaint does not state facts sufficient to constitute a cause of action.

The court below in its opinion on the petition for rehearing, again considered the sufficiency of that fourth paragraph and in that connection said:

> The material thing is knowledge of the false return, and it is immaterial whether a party knows a return is false, either as a matter of independent

knowledge, or by participating in procuring it, for in either case the judgment should be set aside, and we should not hesitate to do so, if such a case were made.

P. 4, stipulation.

This shows that the quotation in the fourth assignment stops short. A reading of the sentence just previous to the one above copied will show more fully the position taken by the court below.

We submit that the entire ruling of the court on this subject of knowledge by the plaintiff in the foreclosure proceedings of the false return is a question of local law and procedure, and that this court will not review the decision of the court below on that subject. The cases heretofore cited clearly support this view and we cite also:

Ludeling v. Chaffe, 143 U. S., 301;

Iowa Central Ry. Co. v. Iowa, 160 U. S., 389, 393;

Sayward v. Denny, 158 U. S., 180.

Please see numerous cases cited in 4 Fed. Stat. Ann., 489, left hand column.

IV.

Fifth Assignment.

This assignment (Rec. 108) is that the court below erred in holding that the fourth paragraph of the amended complaint did not state facts sufficient to constitute a cause of action, or entitle the plaintiff in error to the relief therein demanded or to any relief whatever.

In response to this assignment we submit:

1. That what we have said on the fourth assignment is equally applicable here and need not be repeated.

2. The court below in both opinions held this paragraph to be insufficient in law. In the first opinion it is stated that the cause went to trial on two other paragraphs of the complaint explicitly charging fraud on the part of the plaintiffs in the foreclosure case and their attorneys in procuring service to be made upon some other than the plaintiff in error by fraudulently representing to the sheriff that such person was the defendant in that summons, thus procuring a false return to be made, by which the court was imposed upon and the foreclosure decree rendered. The court below, in both its opinions, affirmed the finding and judgment of the trial court on the evidence, thus negativing in the most effective way the charges of fraud against the plaintiffs and their attorneys in the foreclosure case.

3. A reading of the first, second, and fifth paragraphs in comparison with the fourth paragraph of complaint will show that in those paragraphs was included substantially every material allegation to be found in the fourth paragraph. It follows, therefore, that the courts below found on the evidence and decided on the law adversely to the plaintiff in error as to every material allegation in the fourth paragraph. In other words, every material allegation in that paragraph was involved in fact and law in the case that was actually tried in the trial court and actually before the State Supreme Court on appeal. Hence, we submit that the case here on the fourth paragraph presents an empty shell only. There is nothing here on that paragraph but a moot question.

4. The fourth paragraph (Rec. 17-20) after describing the real estate and stating the infancy and residence of the plaintiff in error, avers (Rec. 18) that she was not served with process, that the sheriff made a false return on the summons, the trial court was wrongfully imposed upon by the false return, and thereupon the trial court was falsely advised in the premises and appointed a guardian *ad litem* to answer as to her interest by requiring proof of the allegations of the complaint. Then the paragraph alleges the sale by the sheriff and charges (Rec. 19) that the attorney in fact of the plaintiff in the foreclosure case had personal knowledge of the facts alleged in the paragraph, as did Mr. Henrich, who purchased the sheriff's certificates of sale. It is alleged that the attorney in fact purchased the property at the sheriff's sale.

In the first paragraph (Rec. 9) the second (Rec. 11, 12) and the fifth (Rec. 25) it is squarely alleged that the plaintiffs in the foreclosure cases or their attorneys wrongfully conspired and confederated together to deprive plaintiff of her interests in the real estate, and caused the trial court to be wrongfully imposed upon by having the sheriff make a false return. That issue of fact, as we have seen, was decided adversely to the plaintiff in error by the trial court and the Supreme Court. Evidently the fourth paragraph was drawn for the purpose of stating a cause of action that would be sufficient without charging notice, personal knowledge, or conspiracy on the part of the plaintiffs in the foreclosure case, for in that paragraph there is a palpable omission of the averments of such personal knowledge, notice, or conspiracy.

The court below, in its principal opinion, takes up the allegations of fraudulent conduct and shows that, under the decisions in that jurisdiction, they are insufficient in law to constitute a cause of action. In the opinion on the petition for re-hearing the court holds that if, in order that the fourth paragraph should be held good or sufficient, it be necessary to hold that the language quoted imputes knowledge such as to charge fraud, there is no reversible error in sustaining the demurrer to the fourth paragraph if the first and fifth paragraphs are grounded upon knowledge of the false return and conspiracy on the part of the appellee's remote grantor, Else Lauenstein, and imposition on the sheriff, including a false return produced thereby. The court then holds that it required no other or different evidence to sustain the first and fifth paragraphs than would have been required under the fourth, and that if a party knows that a return is false and procures a judgment upon it he is legally as culpable as if he were an active participant. Then the court again considers the evidence and holds that there is no evidence of knowledge on the part of appellee's remote grantors or her attorneys of the fact that the return was false.

So we have here, in the first place, decisions in favor of this defendant in error on the evidence, and also rulings that the fourth paragraph is insufficient in law. These law questions are purely local or general and, therefore, we submit, on the authority of the cases cited in this brief, that this court will not review or reverse the court below.

5. Another proposition that we submit to be conclusive is this: The construction of a pleading, and the

meaning to be given its various allegations, are questions of local law as a rule and this court will not review the decision of the state courts on such questions.

Vandalia R. R. Co. v. South Bend, 207 U. S., 359, 367;

Iowa Cent. Ry. Co. v. Iowa, 160 U. S., 389, 393, 394.

6. Finally, we submit, *first,* that if a Federal question has been raised or is to be found in this record, it is apparent that it relates to "due process of law" and, *second,* as we have shown in our argument on the jurisdictional question (point 9) that the Constitution and Statutes of the State are in harmony with the Fourteenth Amendment, for they give reasonable notice and afford fair opportunity to be heard before the issues are decided. In other words, the Constitution and Statutes of the State provide for a regular course of administration through courts of justice and thus comply with the requirements of the Fourteenth Amendment. Whether the Statutes of the State had been duly enacted in accordance with the requirements of the State Constitution is not a Federal question, and the decision of the State courts as to what are the laws of the State are binding upon the Courts of the United States.

Iowa Central Ry. Co. v. Iowa, 160 U. S., 389, 393;

Leeper v. Texas, 139 U. S., 462, 467, 468.

In the course of the opinion in the case last cited, Mr. Chief Justice Fuller held that "law in its regular course of administration through courts of justice is due process, and when secured by the law of the State the consti-

tutional requirement is satisfied; and that due process is so secured by laws operating on all alike, and not subjecting the individual to the arbitrary exercise of the powers of government unrestrained by the established principles of private right and distributive justice."

That opinion was cited and quoted from with approval by Mr. Justice White in *Iowa Central Ry. Co. v. Iowa*, 160 U. S., 389.

We submit that this doctrine covers the whole case now before this court, and that the judgment of the court below should be affirmed.

LOUIS T. MICHENER,
PERRY G. MICHENER,
PETER MAIER,
For Defendant in Error.